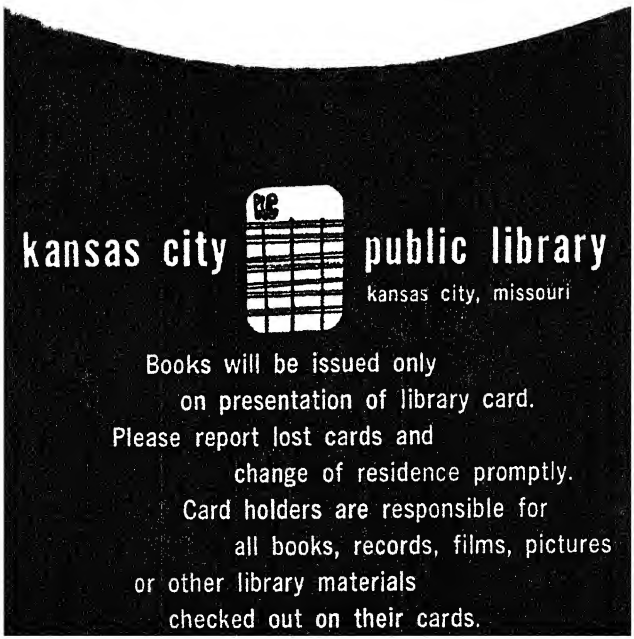

THE ORIGINS OF THE LEAGUE COVENANT

THE ORIGINS OF THE LEAGUE COVENANT

DOCUMENTARY HISTORY OF ITS DRAFTING

BY

FLORENCE WILSON

WITH AN INTRODUCTION

BY

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FOREWORD

UNLESS present signs are false, the Covenant of the League of Nations must be considered as the most important international treaty ever made. When it was first drawn up, most people thought of it as merely an agreement to make war less likely than it had been in the past. But if current developments continue as they have begun the historians of the future will find in it much more than that. They will find the first constitutional foundation there has ever been for the permanent political organization of the international society of States. They will find not only the beginnings of wholly new branches of international law, but actually a great new body of definite legal rules which the Governments have accepted for the conduct of the most important international relations that arise. They will find the framework of an international administrative machine. They will find, in short, that the Covenant was the "Social Contract" by which the civilized nations of the world passed from the "state of nature" in which they previously lived into a Society in which true international government could rapidly evolve.

If this is true, if this is, in fact, the destiny of the institutions which the Covenant set up, it is essential not only that the scholars of the future but that the citizens of to-day should understand the origins from which the Covenant sprang. It is essential that they should understand the meaning of its clauses, as they were understood by those who drew them up. It is essential that they should know why this proposed

amendment was rejected, while that amendment was accepted; that they should grasp the spirit in which the authors of the Covenant did their work; above all, that they should keep alive the statesmanlike conception of an elastic and growing organism which these authors had ever in their minds.

Both scholars and plain citizens are furnished in Miss Florence Wilson's book with the various documents from which the Covenant sprang. They will find, too, an authoritative account of the views which were put forward in the Peace Conference Commission by which it was drawn up, and of the various changes which its clauses underwent. Both the great personal eminence of the members of this Commission, and the historical and practical significance of the views they held, combine to give an absorbing interest to this account.

Some of the documents, moreover, which Miss Wilson has collected, including at least one of the most important, are here published for the first time. The Minutes of the Commission have been available, to scholars who could make the journey, in a few libraries in the United States. But Miss Wilson's account of their main substance, arranged systematically, clause by clause, will now place at the disposition of the public information that is both invaluable and new. As a book of reference, this work is greatly needed and will be widely used, while there is nothing else in any language of which I am aware which provides in a convenient form so much raw material for the formation of a considered judgment on the work which the Peace Conference Commission did.

P. J. NOEL BAKER.

December 22, 1927.

BIOGRAPHICAL NOTE

THE American authoress of this book, Miss Florence Wilson, was on the staff of the Columbia University Library from 1909 to 1917, and among other activities she organized the Dramatic and English Libraries, as well as that of the National Committee for Mental Hygiene. For the last four years of her work at Columbia she was Librarian of Natural Sciences and specialized in international relations.

When, in the latter part of 1917, Colonel House gathered together his army of technical experts to prepare for the Peace Conference, Miss Wilson was included, and organized the Library and Archives of the American Peace Commission. Later she became a full member of the American Peace Commission, being the only woman member of that body.

It was at this stage that Miss Wilson began the work of which the present book is the outcome. At the request of a senior member of the Commission, she undertook to prepare an analysis of the Treaty, and it is the first part of this analysis, with certain amendments and appended documents, which forms the body of this book.

The book, therefore, is an historical document prepared on the spot from first-hand sources, and will undoubtedly prove a most valuable addition to League literature.

Her work in Paris concluded, Miss Wilson was chosen by Sir Eric Drummond, Secretary-General of the League of Nations, to select and organize the library of the Secretariat. For the next seven years

(August 1919 to January 1927) she presided at Geneva over a library of some 70,000 volumes, which had been collected as a result of her own efforts.

In 1927 Miss Wilson left Geneva to take up work with the European Centre of the Carnegie Endowment in Paris, where she is now engaged in the organization of International Relations Clubs in Europe, the Near East and in Egypt.

This brief sketch of Miss Wilson's career is given with the object of demonstrating, not only how eminently qualified she is to be the authoress of such a work, but also to show how the book itself came to be written, and the interesting historical background which it possesses.

JOHN W. WHEELER-BENNETT,
Hon. Secretary,
Association for International Understanding.

February 1928.

PREFACE

THE aim of this treatise is to describe the drafting of the Covenant of the League of Nations, and, by tracing the attitude of the representatives of each country to its terms, to give an interpretation of the Covenant by the men who drafted it. It is an attempt to analyse each article, and to show if possible the origin of its various provisions. It is prepared from notes made in 1919, and as the official documents referred to are now available, it has been decided to publish it in spite of its many imperfections, for it is hoped that it may serve some useful purpose.

The author is grateful for this opportunity to express her deep appreciation for the help she has received from the Association for International Understanding, under whose auspices this work will appear, and to Dame Adelaide Livingstone and Mr. John W. Wheeler-Bennett, for their continued interest and invaluable assistance.

F. W.

PART ONE of the Treaty of Versailles is the Covenant of the League of Nations, the basis of which was a draft presented by President Wilson and used as a basis for discussion at the suggestion of the British Delegation. This was not, as President Wilson said, wholly his own creation. "Its generation was as follows: He had received the Phillimore Report,[1] which had been amended by Colonel House and rewritten by himself. He had again revised it after having received General Smuts's draft[2] and Lord Robert Cecil's[3] reports. It was therefore a compound of various suggestions. He had already seen M. Bourgeois, with whom he found himself to be in substantial accord on principles. He had also discussed his draft with Lord Robert Cecil and General Smuts, and they had found themselves very near together." (*Supreme Council Minutes, January* 21.) At the Plenary Session of January 25, 1919, the "Draft Resolution to the League of Nations"[4] was presented by President Wilson and unanimously accepted. An International

[1] The "Phillimore Report" of March 20, 1918, was a report to the British Cabinet regarding the organisation of a League of Nations. This was considered as a confidential document and sent to President Wilson, who used it in the preparation of his final draft Covenant. The full text has been published in *Woodrow Wilson and World Settlement*, by Ray Stannard Baker, vol. iii. p. 67, and is printed as an appendix to this book.

[2] The text of General Smuts's plan is printed as an appendix.

[3] Plan of Lord Robert Cecil is printed as an appendix. The British draft of the Covenant, dated January 20, 1919, with a letter of transmittal from Lord Robert Cecil to President Wilson, can be found in Ray Stannard Baker, *Woodrow Wilson and World Settlement*, vol. iii. pp. 130-143.

[4] The Draft Resolution used as basis of discussion is printed as an appendix.

Committee was then appointed to work out in detail the Constitution and functions of the League. (*Preliminary Peace Conference Protocol*, No. 2.) This Committee, called the Commission on the League of Nations, was composed of two delegates from each of the Great Powers and nine delegates selected by the small nations. This Commission considered the various plans submitted,[1] and after ten meetings the first draft Covenant was ready. This was presented, at the Plenary session February fourteenth, by President Wilson, and was unanimously accepted. (*Preliminary Peace Conference Protocol*, No. 3.)

The draft was made public in order that discussion of its terms might be provoked. A great deal of constructive criticism followed, and further suggestions resulted from hearings of representatives of thirteen neutral States on the twentieth and twenty-first of March.[2] These various recommendations were taken into consideration by the Commission, which held meetings on the twenty-second, twenty-fourth, and twenty-sixth of March and on the tenth and eleventh of April. (*Report of the Commission on the League of Nations*, p. 10.) The final draft was presented at the Plenary session of April twenty-eighth, 1919, and

[1] The texts of the French and Italian drafts are printed as appendices.

[2] For some long time no report of the Conference with the Neutrals was available. Dr. B. C. J. Loder, one of the Dutch delegates, and later first President of the Permanent Court of International Justice, gave his impression on the Conference before the Dutch Branch of the International Law Association on March 29, 1919 (see *Mededeelingen van de Nederlandsche Vereeniging voor Internationaal Recht.*, No. 12, p. 20). A full report was, however, issued as an annex to the explanatory Memorandum which accompanied the Bill on the adhesion of the Netherlands to the League of Nations, presented to the Dutch Parliament on January 13, 1920. The full English text of this report can be found in *Documents on the League of Nations*, by Mrs. C. A. Kluyver, published by Messrs. A. W. Sijthoff under the auspices of the International Intermediary Institute, 1920, pp. 174-182. The joint draft presented by the Scandinavian Governments is printed as an appendix to this book.

was unanimously adopted. (*Preliminary Peace Conference Protocol*, No. 5.)

N.B.—The paging is not the same in all copies of the Minutes of the Commission on the League of Nations.

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PREAMBLE [1]

THE High Contracting Parties, in order to promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, agree to this Covenant of the League of Nations.

The Preamble, except for certain verbal changes, is the same as that which appeared in the Draft Covenant submitted to the Commission on the League of Nations at its first meeting.

Proposals and Discussions

The following points were raised during the discussion:

Lord ROBERT CECIL (British Empire) pointed out a difficulty in the phrasing, and suggested certain changes in the wording by which Germany might be made to agree to the Covenant without becoming a member of the League. (*Minutes*, p. 71.)

France suggested the following amendments: That the Preamble should begin with the words: "The Powers signatory to the present Covenant, unanimous

[1] *References in Minutes of the Commission on the League of Nations*, pp. 36, 47, 71, 113-117.

in condemning those who visited upon the world the war just ended, firmly resolved to determine the issue of responsibility therefor, yet at the same time desiring to formulate the rules of an international order, whose primary object shall be that of preventing the resurgence of armed force save in the defence of right, desiring likewise to establish the reign of justice throughout the world and to maintain a scrupulous regard for international engagements, continuing and enlarging upon the work begun by The Hague Conference". (*Minutes*, pp. 36, 47.)

M. Reis (Portugal) opposed words of condemnation and punishment. In reference to The Hague Conference M. Reis wished to insert the following declaration in the Minutes: "The Portuguese Delegate regrets that the Commission did not think it advisable to make international arbitration obligatory at least for cases of a judicial order, thus continuing the work of The Hague Conferences of 1899 and 1907". (*Minutes*, p. 47.)

Lord Robert Cecil (British Empire) felt that the question of responsibility for the war should not be introduced into the text. As far as The Hague Conference was concerned he thought that the League of Nations might better stand by itself and not bear the burden of the criticisms which had been levelled against international conventions however highly the whole world might regard them.

The part of the amendment which dealt with the question of responsibilities was withdrawn, and the second part was rejected by a vote of ten to five.

It was understood that this vote in nowise indicated that the Commission was opposed to the two ideas elaborated in the French amendment; merely that the Commission considered it inexpedient to write them into the Covenant.

Japan proposed the following amendment:

That after the words " relations between nations " the following clause should be inserted: " By the endorsement of the principles of the equality of nations and the just treatment of their nationals ". (*Minutes*, p. 115.)

Lord ROBERT CECIL (British Empire) opposed. He stated that the points either were vague and ineffective or else of practical significance. In the latter case they opened the door to serious controversy and to interference in the domestic affairs of States. Japan would be permanently represented on the Executive Council, and this fact would place her in a position of complete equality with the other Great Powers.

President WILSON (United States) opposed. He said that not only did the Covenant recognize the equality of States, but it laid down provisions for defending this equality. He was of the opinion that the amendment would lead to the greatest difficulties in controversies which would take place outside the Commission.

The Amendment was supported on the principle of the equality of nations by Italy, France, Czecho-slovak Republic, Poland, China and Serbia. (*Minutes*, pp. 114-117.)

A vote was taken and eleven out of seventeen votes were recorded in favour of the Amendment, but as a unanimous vote was required it was declared rejected. (*Minutes*, p. 116.)

President WILSON (United States) said that no one could interpret the vote as a condemnation of the principle proposed by the Japanese Delegate. (*Minutes*, p. 117.)

ARTICLE I [1]

THE original Members of the League shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

Paragraph two of Article I., which provides for the admission of States to the League, appeared in part as Article VI. in the original draft.

The first paragraph, relating to original members, was proposed by Lord Robert Cecil after considerable discussion, during which M. Bourgeois raised the

[1] *References in Minutes of Commission on the League of Nations*, pp. 20, 22, 23, 43, 49-51, 60, 74, 75, 86-88, 90, 99-100, 117.

question whether or not the Covenant should be immediately incorporated into the Treaty. The first half of paragraph two, which provides that full self-governing dominions and colonies should be on a par with autonomous States, was proposed to meet the wishes of the British Delegation. No serious objection was raised to granting such privileges to the British Dominions and Colonies. (*Minutes*, pp. 22, 23, 49, 50.)

The second part of paragraph two was intended to lay down the conditions which should govern the admission of Germany into the League. It represents a compromise between the extreme French views and a more liberal view of the British and American Delegations. (*Minutes*, pp. 22-23, 43, 49-51.)

Paragraph three, which contains the conditions governing withdrawal from the League, was added at the suggestion of President Wilson and was accepted, after much discussion, in a modified form. It first provided for a period of ten years and that thereafter any State might withdraw upon giving one year's notice. After discussion President Wilson agreed to abandon the time limit and substitute a two years' notice. (*Minutes*, pp. 86-88.)

Proposals and Discussions

President Wilson (United States) proposed to add the words "Only self-governing States shall be admitted to membership in the League; Colonies enjoying full powers of self-government may be admitted." (*Minutes*, p. 22.)

M. Bourgeois (France) stated that the consideration of moral conditions set forth in President Wilson's first draft was now omitted. In his opinion these conditions, which were mentioned in the French and Italian drafts, had reference to the reparations to be

required from Germany before admitting her into the League. (*Minutes*, p. 22.)

Lord ROBERT CECIL (British Empire) proposed to add after the word "Delegates" the words "and by a like majority the League may impose on any States seeking admission such conditions as it may think fit." (*Minutes*, p. 22.) Lord Robert Cecil emphasized the special position of India. (*Minutes*, pp. 23, 50.)

As regards the conditions as to the form of government to be required from States desiring admission, M. Bourgeois (France) stated, by way of example, the form of the French draft, which contained the following definition: "Nations having representative institutions of such nature that they may be considered as themselves responsible for the acts of their Government". (*Minutes*, p. 22.)

It was agreed that the question of a definitive formula on this point should be further considered. (*Minutes*, p. 23.)

M. BOURGEOIS (France) said that all the associated States must be at the same time cleansed of their past and free for the future; he therefore suggested the following amendment:

The second paragraph should be modified as follows: "Furthermore no nation shall be admitted into the League unless it has representative institutions which permit of its being considered as itself responsible for the acts of its own Government; unless it is in a position to give effective guarantees of its sincere intention to abide by its agreement; and unless it conforms to those principles which the League shall formulate regarding naval and military forces and armaments". (*Minutes*, p. 43.)

Lord ROBERT CECIL (British Empire) asked that India should be admitted to the League as a signatory to the Covenant. (*Minutes*, p. 50.)

President WILSON (United States) said that the League was founded solely by the Allied and Associated Powers, but that the condition of admission of other States would not be such as to exclude those who sincerely desired to join. (*Minutes*, p. 50.)

Lord ROBERT CECIL (British Empire) suggested that there be added at the end of Article VII.,[1] after the words "the admission to the League of States not signatory to the present Covenant", the words "and not named in the Protocol hereto as States to be invited to adhere to the Covenant".

M. BOURGEOIS (France) said that it would be a delicate matter to draw up a list of States to be invited to join the League, and he thought it advisable to hold to general conditions of admission as set forth in the Article. (*Minutes*, p. 50.)

After an exchange of views between M. Hymans, M. Larnaude, and M. Orlando, M. Bourgeois recalled the fact that the scheme of the League embraced three stages: first, the organization of the League by the Allies; second, the inclusion in the Treaty of Peace of special conditions, such as disarmament; finally, after peace, the convocation of an international conference including all nations admitted into the fellowship of the League of Nations.

M. LARNAUDE (France) stated that the essential thing was the imposition of severe conditions on those nations which could not be trusted. (*Minutes*, p. 50.)

Lord ROBERT CECIL's amendment was put to the vote and adopted. (*Minutes*, p. 50.)

Lord ROBERT CECIL proposed an amendment which forms the first paragraph. (*Minutes*, p. 74.)

[1] The text of this Article is that of the Draft Covenant presented to the Peace Conference on 14th February 1919. This Draft is printed as Document 18 in the third volume of *Woodrow Wilson and World Settlement*, by Ray Stannard Baker. Heinemann, London, 1923 (page 165).

President WILSON (United States) asked if there would be any objection to changing the two-thirds majority now required for the admission of a new adherent into a simple majority. (*Minutes*, p. 74.)

This amendment was withdrawn. (*Minutes*, p. 75.)

M. REIS (Portugal) suggested that the Allied States should be the original members and the other States should be invited subsequently to participate.

M. LARNAUDE (France) recalled a distinction which had previously been drawn by Lord Robert Cecil between the neutrals which should be immediately admitted into the League and those which should be subsequently admitted.

Lord ROBERT CECIL (British Empire) said that though all States without exception might not be immediately admitted into the League, certain of them deserved to be admitted at its very foundation. (*Minutes*, p. 74.)

M. BOURGEOIS (France) reserved the right to consult his Government upon the question of whether the League of Nations should be incorporated in the Treaty at the time of its signature or at the time of its ratification.

M. REIS (Portugal) made a similar reservation.

M. HYMANS (Belgium) thought that the honour of having been the founders of the League should be reserved for those States which had participated in the War. (*Minutes*, p. 75.)

President WILSON (United States) believed it was best to avoid giving to the League the appearance of an alliance between victorious belligerents, in the first place because it was a world League; in the second place, because such a policy would lead to a too exclusive spirit in considering the claims to admission of new members.

Lord ROBERT CECIL (British Empire) agreed with President Wilson.

M. REIS (Portugal) agreed with M. Hymans.

M. VESNITCH and M. ORLANDO agreed with President Wilson and Lord Robert Cecil. (*Minutes*, p. 25.)

President WILSON (United States) suggested a modification of the Article, which was then referred to the Drafting Committee.

Proposals and Discussions referring to Paragraph Three, relating to withdrawal from the League. (*Minutes*, pp. 86-88.)

President WILSON (United States) proposed the following amendment: "After the expiration of ten years from the ratification of the Treaty of Peace, of which this Covenant forms a part, any State member of the League may, after giving one year's notice of its intention, withdraw from the League, provided all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal". (*Minutes*, p. 86.)

President WILSON thought that if the League were successful it would be morally impossible for a State to withdraw.

M. LARNAUDE (France) objected to the placing of a ten years' time limit as it would give the idea that the success of the League was not hoped for.

President WILSON (United States) said he had no idea of limiting the duration of the League, but that Sovereign States could not permanently be bound.

Lord ROBERT CECIL (British Empire) said he was much impressed by M. Larnaude's argument, but that a Treaty could not be considered permanent. He doubted, however, whether ten years sufficed. The

effects of the war would only be beginning to pass off in ten years. He suggested fifteen or twenty years, but if a period less than twenty years was fixed, then two years' notice ought to be given.

M. ORLANDO (Italy) thought that the possibility of withdrawal might be left; he considered that the time limit should be abandoned, but that two years' notice should be given. He said it was not so much actual liberty as theoretical liberty that was valuable to people's minds. If States had the power of withdrawal they would probably not want to use it.

President WILSON (United States) agreed to abandon the time limit and substitute two years' notice.

M. LARNAUDE (France) was not convinced. He said that for some time past national sovereignty had been a fiction. He wished to strike out on new lines and provide a substitute for the old order of international relations. He thought that the giving of notice by a Great Power would throw the League into confusion.

President WILSON (United States) said that he did not entertain the smallest fear that any State would take advantage of the proposed clause. Any State which did so would become an outlaw. The sovereignty of their country was the fetish of many public men. He thought that the clause would have no practical effects, while its omission might have very serious results. The time would come when men would be just as eager partisans of the sovereignty of mankind as they were now of their own national sovereignty. He added that no State would have the moral right to withdraw and he only proposed to admit a legal right.

M. BOURGEOIS (France) thought that there should be a negative rather than a positive formula. This would leave the right to withdraw and would also

ensure that States might not do so except on terms that would not damage the League.

M. VESNITCH (Serbia) thought that the Constitution of the League should be as elastic as possible, so that the principle of liberty might be protected.

M. REIS (Portugal) believed that what President Wilson called the fetish of State sovereignty was the chief obstacle to the creation of an effective League of Nations. He added that the League would never be a reality till it became "the United States of the World". The present League was still far from it; it had, for instance, lost the opportunity of rendering war impossible, at least between Members of the League, by making arbitration compulsory in all cases.

M. VENISELOS (Greece) wanted a term of twenty years fixed but would accept fifteen or even ten. He said it was essential to have some security.

M. LARNAUDE (France) thought that nations leaving the League should be compelled to render an explanation.

ARTICLE II

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

Article II., which was Article I. of the original draft, was not changed in any substantial sense from the first draft.

ARTICLE III [1]

(Article II. of Original Draft)

The Assembly shall consist of Representatives of the Members of the League.

The Assembly shall meet at stated intervals, and from time to time as occasion may require, at the Seat of the League or at such other place as may be decided upon.

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

At meetings of the Assembly each Member of the League shall have one vote, and may have not more than three Representatives.

The discussion on this Article centred on the number of representatives of each Member of the League in the Assembly and the method of their selection. It was originally provided that each State should have not more than two representatives. This number was raised to three on the theory that a better statement of public opinion of each State could be arrived at after discussion between three representatives, each of whom might be appointed upon the basis of representing some particular domestic interest. General Smuts was of the opinion that provision should be made in the Covenant for the selection of the Delegates in order that the Assembly should include representatives of leading social groups. Serious objections were raised to this suggestion, as it was

[1] *References in Minutes of the Commission on the League of Nations*, pp. 20, 21, 47-48.

thought that the wording of the text was sufficiently flexible to permit of a system of election satisfactory to public opinion, and M. Hymans and other Continental representatives could not accept the idea of sending representatives who were not directly responsible to the political party in power.

Proposals and Discussions

General SMUTS (British Empire) proposed the following amendment: "At least once in four years an extraordinary meeting of the Body of Delegates shall be held, which shall include representatives of national Parliaments and other bodies representative of public opinion, in accordance with a scheme to be drawn up by the Executive Council". (*Minutes*, p. 47.)

Lord ROBERT CECIL (British Empire) believed that it would be better to wait until public opinion had expressed its desires a little more clearly. (*Minutes*, p. 47.)

M. LARNAUDE (France) remarked that since Article II. put no restriction upon the manner of choosing representatives, General Smuts's point was covered. (*Minutes*, p. 47.)

President WILSON (United States) was likewise of the opinion that it would be inadvisable to modify the article since it was sufficiently flexible. (*Minutes*, p. 47.)

M. HYMANS (Belgium) emphasized the necessity of deciding the maximum number of representatives of each State, and he expressed the danger of giving representation to social groups. (*Minutes*, p. 48.)

Lord ROBERT CECIL (British Empire) said that each Power might be represented as it saw fit. He thought it likely that England, for example, might send a leader of the Labour Party, someone who would be

spokesman of religious interests, and, he hoped, a woman. (*Minutes*, p. 48.)

President WILSON (United States) observed that representatives would be chosen by the State, which should, in choosing, make a point of satisfying public opinion. The Government's representatives would thus be true representatives of the people at large. (*Minutes*, p. 48.)

M. BOURGEOIS (France) was of the opinion that the Delegates would certainly represent the prevailing opinion of the majority of their fellow-citizens. The Government would be responsible for its choice, and if it was mistaken it would promptly be advised of that fact by public opinion. (*Minutes*, p. 48.)

M. ORLANDO (Italy) believed that it was necessary that each State should have the right to send the same number of representatives. As far as the issue raised by General Smuts was concerned he thought that it would be preferable to let it work itself out within the Body of Delegates. (*Minutes*, p. 48.)

After an exchange of opinions in which Senator Scialoja, Lord Robert Cecil, M. Reis, M. Bourgeois, M. Vesnitch and M. Larnaude took part, a proposal that the maximum number of representatives for each State be fixed at five was put to the vote and rejected, and three was finally agreed upon as the maximum number. (*Minutes*, p. 48.)

ARTICLE IV [1]

(Article III. in the First Draft)

The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Greece and Spain shall be members of the Council.

With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the con-

[1] *References in Minutes of Commission on the League of Nations*, pp. 20, 21, 22, 48-49, 72, 73, 92, 100, 117. *Preliminary Peace Conference Protocol*, No. 5, pp. 4, 20, 21.

sideration of matters specially affecting the interests of that Member of the League.

At meetings of the Council each Member of the League represented on the Council shall have one vote, and may have not more than one Representative.

The conception of the Council remained the same from the outset, that of a small executive body. In the original draft it was provided that the United States, Great Britain, France, Italy and Japan should have representatives upon the Executive Council, whereas the other Powers would be represented only when their interests were directly affected. All the smaller States represented on the Commission made serious objections and insisted that they should be represented on an equality with the Great Powers. A compromise was finally struck on the basis of five representatives for the Principal Powers and four representatives of the Smaller Powers.

Proposals and Discussions

General discussion and objections to first draft in reference to representation and selection of Smaller Powers on Executive Council. (*Minutes*, pp. 20, 21, 22, 48-49, 72.)

Lord Robert Cecil (British Empire) was opposed to increase of Executive Council. (*Minutes*, p. 20.)

M. Hymans (Belgium) proposed five delegates for smaller nations so that they would be represented on an equality with Great Powers. (*Minutes*, p. 21.)

M. Vesnitch (Serbia) proposed four delegates and was supported by M. Bourgeois (France). (*Minutes*, p. 21.)

M. Pessoa (Brazil) accepted the number, but

opposed selection by the Assembly. (*Minutes*, pp. 22, 49.)

M. Veniselos (Greece) urged the acceptance of four representatives. (*Minutes*, p. 48.)

Lord Robert Cecil (British Empire) accepted four, but insisted that the decision be unanimous.

M. Reis (Portugal) provisionally accepted four. (*Minutes*, p. 48.)

M. Bourgeois (France) said that the chief thing was to maintain due proportion between the Great and Small Powers as expressed in the relation of five to four, *i.e.* a majority of one. (*Minutes*, p. 49.)

M. Veniselos (Greece) accepted a majority of one. (*Minutes*, p. 49.)

Lord Robert Cecil (British Empire), in order to meet the criticism that the League was dominated by the Great Powers, suggested an amendment, but this was withdrawn in deference to opinion of M. Vesnitch (Serbia) and M. Hymans (Belgium), who believed that more suitable representatives of the Smaller Powers would be chosen if the Great Powers participated in the selection. (*Minutes*, p. 72.)

M. Hymans (Belgium) proposed that the Executive Council should be composed of nine members to be selected by the Body of Delegates from among its numbers. These nine members should be chosen from nine separate States, but should include a citizen of each of the Great Powers. (*Minutes*, p. 72.)

Lord Robert Cecil (British Empire) said that the decision of the Council would lose a great deal of necessary authority if representatives of the Great Powers were not directly appointed by the Powers themselves. (*Minutes*, p. 72.)

Amendment withdrawn. (*Minutes*, p. 72.)

M. Hymans (Belgium) proposed that a distinction

be drawn between functions of the Executive Council and Body of Delegates. (*Minutes*, p. 73.)

President WILSON (United States) said such a distinction would probably be interpreted as a limitation of the power of the Body of Delegates. (*Minutes*, p. 73.)

M. HYMANS (Belgium) withdrew proposal. (*Minutes*, p. 73.)

Third Sentence

Inasmuch as the scheme of action called for simultaneous meetings of the Council and Assembly at the first session of the League, and inasmuch as under normal circumstances it was necessary for the Assembly to nominate the four additional members of the Executive Council, it was necessary to name in the Covenant at the outset certain specific States who should complete the Executive Council in addition to the Principal Allied and Associated Powers. At the Plenary Session of April 28, on President Wilson's motion, the Conference decided that representatives of Belgium, Brazil, Spain and Greece should be the first four additional members of the Council. (*Minutes*, p. 117. *Preliminary Peace Conference Protocol*, No. 5, p. 4.)

Proposals and Discussions

Lord ROBERT CECIL (British Empire) proposed that the Chairman should be entrusted with the duty of naming the four States to be represented on the Council in addition to the Five Great Powers. (*Minutes*, p. 117.)

M. LARNAUDE (France) thought that the choice might be left to the representatives of the Five Great Powers. (*Minutes*, p. 117.)

Lord ROBERT CECIL (British Empire) suggested that

three Allied and one Neutral State should be selected. (*Minutes*, p. 117.)

M. BOURGEOIS (France) thought the selection a political act of the greatest interest and that it would be necessary to consult the Governments. (*Minutes*, p. 117.)

M. ORLANDO (Italy) said that the Commission had not the competence to make the selection. (*Minutes*, p. 117.)

Dr. COSTA (Portugal) opposed President Wilson's selection of a representative of a neutral country to a seat on the Executive Council on the grounds that a neutral country was not a member of the League. (*Preliminary Peace Conference Protocol*, No. 5, pp. 20-21.)

Second Paragraph

This paragraph was suggested in order to provide for the possible increase of the Council at a time when certain states now outside the League should be admitted. It was phrased in general terms in order that Germany and Russia might not be specifically named. The second half of the paragraph was introduced in deference to the views of the smaller states, who felt that their representation, in case of an increase of the number of the larger states, should be correspondingly increased.

The third and fourth paragraphs existed in the original draft.

Fifth Paragraph

This provision, which first appeared in the Covenant at an early session of the Commission, never aroused any discussion so far as the principle involved was concerned. More than once, however, the Commission was dissatisfied with the way in which the principle was expressed, and at one stage of the dis-

cussion struck it out of the Covenant. It was finally inserted again as the best possible way of expressing the idea.

Proposals and Discussions

Lord Robert Cecil (British Empire) moved an amendment to the last paragraph after the words " to attend " so as to read " and sit as a member at any meeting of the Council at which matters directly affecting its interests are to be discussed ". This amendment represented a return to an earlier wording of the Covenant and was brought forward again in order to avoid ambiguity. Amendment was adopted. (*Minutes*, p. 73.)

General Smuts (British Empire) asked if States summoned to meetings of the Council would have the right to vote. (*Minutes*, p. 92.)

Lord Robert Cecil (British Empire) said that it would be no satisfaction to States to be summoned as non-effective members. The League should not be able to dispose of the rights of any State or to order about its soldiers without the consent of that State. The State should have the power of voting on the decision. (*Minutes*, p. 92.)

M. Reis (Portugal) asked why the word " binding " had been abandoned. (*Minutes*, p. 92.)

Lord Robert Cecil (British Empire) replied that it was a principle of the League that no State should be forced into a decision against its will. (*Minutes*, p. 92.)

ARTICLE V[1]

(Paragraph 2 of Article III. of Original Draft)

EXCEPT where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting.

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of committees to investigate particular matters, shall be regulated by the Assembly or by the Council, and may be decided by a majority of the Members of the League represented at the meeting.

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

Article V. was accepted with little discussion.

First Paragraph

The first paragraph, which provides for a unanimous vote in the Council and Assembly, was suggested by Lord Robert Cecil. (*Minutes*, p. 73.) In order to make the Covenant conform with other portions of the Treaty the following words were added at the instance of President Wilson: "or by the terms of this Treaty". (*Preliminary Peace Conference Protocol*, No. 5, p. 5.)

Second Paragraph

The second paragraph on the procedure at meetings

[1] *References in Minutes of Commission on the League of Nations*, pp. 22, 23, 73. *Preliminary Peace Conference Protocol*, No. 5, p. 5.

was included in Article II. of the first draft and was accepted without controversy.

Third Paragraph

The third paragraph, on the first meeting, was inserted out of compliment to President Wilson at the instance of the British Delegation. (*Minutes*, p. 22.)

Proposals and Discussions

Lord ROBERT CECIL (British Empire) moved the following amendment: Except where otherwise expressly provided in the present Covenant, decisions at any meeting of the Body of Delegates or of the Executive Council require the agreement of all the States represented at the meeting. Amendment was adopted. (*Minutes*, p. 73.)

M. REIS (Portugal) proposed to change the form of the Amendment. (*Minutes*, p. 73.)

M. BOURGEOIS (France) remarked that at a recent meeting in London the question of unanimity had been examined, and that it had been decided that in certain cases the League should be able to act by majority. (*Minutes*, p. 73.)

M. VENISELOS (Greece) remarked that he proposed to make an amendment touching this matter on Article XV.

ARTICLE VI [1]

(Article IV. of Original Draft)

The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

Article VI. on the Secretariat was accepted as originally proposed with little discussion and only a few verbal changes.

Second Paragraph

It was necessary to have a Secretary-General appointed from the moment of the formation of the League, in order to provide a Secretariat which should be ready to function at the time of the first meeting of

[1] *References in Minutes of Commission on the League of Nations*, pp. 22, 49, 51, 92. *Preliminary Peace Conference Protocol*, No. 5, p. 5.

the Council and Assembly. The suggestion as to the manner of his appointment (by an annex) was made by the British Delegation. (*Minutes*, p. 73.) There was never any objection to the principle, though the form of words by which this appointment was to be accomplished was not easy to discover.

The Hon. Sir James Eric Drummond was elected the first Secretary-General at the instance of President Wilson. (*Preliminary Peace Conference Protocol*, No. 5, p. 5.)

Fifth Paragraph

This provision for the apportionment of the expenses of the League appeared in the first draft of the Covenant, and was accepted as the most convenient method for determining the equitable share of each state in the expenses.

ARTICLE VII[1]

THE Seat of the League is established at Geneva.

The Council may at any time decide that the Seat of the League shall be established elsewhere.

All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable.

The controversy as to the Seat of the League aroused a great deal of animated discussion. The choice lay between Brussels and Geneva. The Commission selected Geneva only by a majority vote, the only decision of the Commission which was reached by a simple majority. At the last meeting of the Commission when this method of procedure was called into question, President Wilson justified his ruling with regard to the selection of Geneva by a majority vote.

Proposals and Discussions

On the motion of President Wilson a committee, consisting of M. Orlando, Lt.-General Smuts, Baron Makino and Col. House, was appointed to inquire

[1] *References in Minutes of Commission on the League of Nations*, pp. 73, 74, 77, 84, 88, 89, 90, 92-95, 116. *Preliminary Peace Conference Protocol*, No. 5, p. 7.

into the question of the locality of the Seat of the League. (*Minutes*, p. 84.)

M. ORLANDO (Italy) representing the Committee proposed Geneva. M. HYMANS (Belgium) urged that Brussels should be selected as Seat of League, and was supported by M. KRAMAR (Czechoslovakia), M. BOURGEOIS and M. LARNAUDE (France). Geneva was selected by a majority vote. (*Minutes*, pp. 92-95. *Preliminary Peace Conference Protocol*, No. 5, p. 7.)

President WILSON (United States) defended majority in determining Seat of League. (*Minutes*, p. 116.)

Paragraph Three

(*Minutes of the Commission on the League of Nations*, pp. 77, 88, 89-90.)

This provision provided for the equal eligibility of men and women for positions under the League, was introduced by the British Delegation and was accepted without discussion. (*Minutes*, p. 88.)

A delegation representing the International Council of Women and the Suffragist Conference of the Allied countries and the United States was received by the Commission. (*Minutes*, pp. 89-90.)

ARTICLE VIII[1]

The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations.

The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments.

Such plans shall be subject to reconsideration and revision at least every ten years.

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council.

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections. The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety.

The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to war-like purposes.

[1] *References in Minutes of the Commission on the League of Nations*, pp. 25, 42-46, 51, 58, 59, 60, 76-77, 83, 95. *Preliminary Peace Conference Protocol*, No. 5, pp. 8-13.

The most energetic discussion of the Commission centred around this article on the limitation of armament, every word of which, at some time or another, was subjected to closest scrutiny. In the original draft the provisions were much stronger than they stand in the final draft so far as the armaments possessed by the members of the League were concerned.

Proposals and Discussions

Paragraph 1

At the instance of the Japanese Delegation the words " domestic safety " were changed to the words " national safety ". (*Minutes*, p. 25.)

Paragraphs 2-4

M. Bourgeois (France) said that France could not agree to the abolition of compulsory military service, which appeared to France to be a fundamental issue of democracy, and was a corollary of universal suffrage. (*Minutes*, p. 25.)

After remarks by M. Orlando and M. Larnaude, President Wilson (United States) proposed to delete the last clause of the first paragraph relative to the possibility of abolishing compulsory military service, and to substitute for it the following: " The Executive Council shall also determine for the consideration and action of the several governments what military equipment and armament is fair and reasonable in proportion to the scale of forces laid down in the programme of disarmament; and these limits, when adopted, shall not be exceeded without the permission of the Body of Delegates ". Amendment adopted. (*Minutes*, p. 25.)

Upon the motion of the French Delegation (*Minutes*, p. 43), which was largely supported by the

other States represented on the Commission, the phrase " taking account of the geographical situation and circumstances of each State " was introduced. (*Minutes*, pp. 43, 45, 51.)

Lord ROBERT CECIL (British Empire) proposed to add the following words: " for the consideration and action of the several Governments ". Adopted. (*Minutes*, p. 75.)

Paragraph three on the reconsideration of plans was introduced by the Japanese Delegation and was accepted as amended by the American Delegation. (*Minutes*, p. 76.)

The wording of paragraph four on the agreement not to exceed the limitation of armament as accepted was suggested by Lord Robert Cecil. (*Minutes*, p. 76.)

Paragraph 5

This was considerably tempered from the original draft, proposed by President Wilson (*Minutes*, pp. 25, 51), which provided that private manufacture of munitions should be abolished.

The proviso with regard to the necessity of those members of the League which could not manufacture arms necessary for their own safety was inserted at the special instance of the Portuguese and Roumanian Delegations.

Paragraph 6

This paragraph represents a compromise between the British and American views on the one hand and the French views on the other. More than once during the meetings of the Commission, the French Delegation urged the constitution of a Committee of Control which should examine and report upon the way in which the members of the League were living up to their obligations with regard to armaments.

(*Minutes*, pp. 25, 42, 43, 44, 45, 46, 51, 60, 75, 76. *Preliminary Peace Conference Protocol*, No. 5, pp. 8-13.)

France proposed the following amendments which were rejected: "It will establish an international control of troops and armaments, and the High Contracting Parties agree to submit themselves to it in all good faith. It will fix the conditions under which the permanent existence and organization of an international force may be assured." (*Minutes*, p. 42; Discussion, pp. 42-46; 59, 60, 75, 76.) "The High Contracting Parties, being determined to interchange full and frank information as to the scale of armaments, their military and naval programmes and the conditions of such of their industries as are adaptable to warlike purposes, have appointed a Commitee for the purpose of ascertaining as far as possible the above information." (*Preliminary Peace Conference Protocol*, No. 5, pp. 8-13.)

ARTICLE IX[1]

A PERMANENT Commission shall be constituted to advise the Council on the execution of the provisions of Articles I. and VIII., and on military, naval and air questions generally.

This provision was inserted, at the instance of Lord Robert Cecil (*Minutes*, pp. 45, 51, 60, 78), as a concession to the French Delegation, who desired that a military and naval commission should be created as a sort of international general staff acting upon its own information and upon its own initiative. Article IX., however, provides that the initiative of any action by such a commission shall come from the Council and not from the commission itself. The French Delegation was never satisfied with the strength of this provision, and did not yield its contentions on this point until the final plenary session of the Conference when the Covenant was adopted.

The French Delegation proposed the following amendment at various times during the discussion of Article IX. It was finally rejected at the plenary session of April 28.

"A permanent organization shall be constituted for the purpose of considering and providing for naval and military measures to enforce the obligations incumbent on the High Contracting Parties under this Covenant, and of making them immediately operative in all cases of emergency." (*Minutes*, pp. 60-61. *Preliminary Peace Conference Protocol*, No. 5, p. 8.)

[1] *References in Minutes of Commission on the League of Nations*, pp. 42-46, 60-61, 76-79, 81, 95. *Preliminary Peace Conference Protocol*, No. 5, pp. 8-13.

ARTICLE X[1]

(Article VII. of Original Draft)

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

The first paragraph of Article X., on the mutual guarantee of territory and independence, appeared in the original draft. The second sentence was added at the suggestion of President Wilson (*Minutes*, p. 24); the phrase " and in case of any such aggression " was added later. (*Minutes*, p. 51.) Special note should be made that the word " external " shows that the League cannot be used to suppress national or other movements within boundaries of the member States, but only to prevent forcible annexations from without.

Proposals and Discussions

Lord Robert Cecil (British Empire) proposed omission of words " and preserve as against external aggression ". (*Minutes*, p. 24.) Rejected.

M. Larnaude (France) proposed omission of words " existing political independence ". (*Minutes*, p. 24.) Rejected.

[1] *References in Minutes of Commission on the League of Nations*, pp. 24, 51, 61, 95-99.

President WILSON (United States) proposed the following amendment: "Nothing in this Covenant shall be deemed to affect the validity of international engagements such as treaties of arbitration or regional understandings like the Monroe Doctrine for securing the maintenance of peace". (*Minutes*, p. 95.)

After a long discussion (see Proposals and Discussions under Article XXI. of this treatise) and at the instance of Lord Robert Cecil, it was decided that this amendment should appear after Article 20. (*Minutes*, pp. 95-99.)

ARTICLE XI[1]

(Article IX. of Original Draft)

ANY war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council.

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

Article XI. was accepted without discussion. The second sentence, beginning with the words " In case any such emergency ", was added at the instance of the French Delegation. (*Minutes*, p. 78.) At the suggestion of the British Delegation the words " the League shall " were substituted for the words " the High Contracting Parties reserve the right to " (*Minutes*, p. 79.)

[1] *References in Minutes of Commission on the League of Nations*, pp. 25, 61, 79.

ARTICLE XII[1]

(Article X. of Original Draft)

The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute.

Article XII., with a few changes, is the same as Article X. of the original draft. The second paragraph, which provides for a time limit within which an award must be made, was added at the suggestion of the British Delegation. (*Minutes*, pp. 25, 36, 37.)

Proposals and Discussions

The French Delegation proposed an amendment intended to indicate more clearly the obligation of the Members of the League to submit any differences in the first instance to inquiry or to arbitration. This was referred to the Drafting Committee, together with an amendment proposed by the British Delegation to delete the words after "Executive Council", in the

[1] *References in Minutes of Commission on the League of Nations*, pp. 25, 36, 37, 61, 80, 106-108.

fifth line as far as the end of the sentence and substitute therefor " as hereinafter provided ". (*Minutes*, p. 80.) The original draft read after " Council " " and that they will not even then resort to war as against a member of the League which complies with the award of the arbitrators or the recommendation of the Executive Council ". (*Minutes*, p. 67.)

The following amendment was proposed by the Japanese Delegation:

" From the time a dispute is submitted to arbitration or to inquiry by the Executive Council, and until the lapse of the aforesaid term of three months, the parties to the dispute shall refrain from making any military preparations." This amendment was intended to permit the League to examine the matter submitted to it without being distracted by the fact of military preparations, and in order that it might have time to make its decisions with every sense of security. (*Minutes*, p. 80.)

The amendment was supported only by the Italian Delegation and led to a vigorous discussion, the prevailing opinion being that it would give an important advantage to such States as maintained their military establishment in a highly developed state, and would compel each State to maintain its forces at the maximum in order that it might be sure of defending itself.

Baron MAKINO (Japan) did not insist on the amendment, but expressed the desire that the Council would strictly supervise the performance of the programme of reduction. (*Minutes*, pp. 106-108.)

ARTICLE XIII [1]

(Article XII. of Original Draft)

The Members of the League agree that whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration.

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration.

For the consideration of any such dispute the Court of Arbitration to which the case is referred shall be the Court agreed on by the parties to the dispute or stipulated in any convention existing between them.

The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the League which complies therewith. In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto.

Article XIII., which is an agreement to submit certain disputes to arbitration, appeared in part as Article XI. of the original draft and created little discussion.

[1] *References in Minutes of Commission on the League of Nations*, pp. 25, 27, 36, 37, 52, 80, 83, 108.

Proposals and Discussions

Paragraph 1

M. HYMANS (Belgium) suggested the following change: substitute for the words "which they recognize to be" the words "which is according to any Convention existing between them, or which they agree to be". Although there was no discussion this change was not made. (*Minutes*, pp. 80, 83.)

Paragraph 2

Paragraph 2, which indicates the general character of cases capable of solution by arbitration, was suggested by the British Delegation, and was adopted with a change, made at the suggestion of President Wilson, to make it clear that the cases enumerated were only mentioned as examples. (*Minutes*, pp. 80, 83, 108.)

Proposals and Discussions

M. REIS (Portugal) objected to the word "generally", for to enumerate cases "generally" susceptible of arbitration implied that in certain particular cases recourse to arbitration was not possible. (*Minutes*, p. 108.)

Lord ROBERT CECIL (British Empire) in his reply said it would be dangerous for the future of the principle of arbitration to impose it too strictly in a great number of cases. (*Minutes*, p. 108.)

In answer to a question of M. Bourgeois (France) Lord Robert Cecil stated that The Hague Conventions were included in the Treaties referred to. (*Minutes*, p. 108.)

Paragraph 3

Paragraph 3 on the Court of Arbitration was added, without discussion, at the instance of Lord Robert Cecil (British Empire). (*Minutes*, pp. 25, 27.)

Paragraph 4

The first sentence, on the agreement to carry out any award rendered, was in the original draft, in Article X. and Article XI. The last sentence, which provides that the Council shall propose steps to be taken in the event of failure to carry out an award, was added when this provision was made in Article XV. (*Minutes*, pp. 36, 37, 52.)

ARTICLE XIV[1]

(Article XII. of Original Draft)

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly.

Article XIV. on the establishment of a Permanent Court of International Justice is the same as Article XII. of the original draft, with two changes as follows: Firstly the new draft provides that the plans for such a Court shall be submitted to members of the League, and secondly that the Court shall be competent to determine only disputes of an international character, but may give an advisory opinion upon any dispute referred to it by the Council or by the Assembly.

Proposals and Discussions

At the instance of President Wilson the word "shall" was substituted for the word "will" throughout the article. He also suggested another verbal change. (*Minutes*, pp. 25-26.)

[1] *References in Minutes of Commission on the League of Nations*, pp. 25, 26, 61, 62, 80-83, 108-109.

The French Delegation, which had urged that it should be stated in the Preamble that the League of Nations should be considered as continuing and enlarging upon the work begun by The Hague Conferences, again urged that some reference should be made to these Conferences.

The Portuguese Delegation supported this view, but the British and American Delegations were strongly opposed. (*Minutes*, pp. 26, 61, 62.)

The French Delegation suggested the following amendment, the object of which was to define the jurisdiction of the Permanent Court of Justice and entrust it particularly with questions relative to the interpretation of the Covenant. M. Larnaude, the French Delegate, added that his proposal was based upon the Constitution of the United States, according to which the Supreme Court had jurisdiction over questions of a constitutional nature:

"That this Court shall be competent to hear and determine:

"(*a*) Any matter which is submitted to it by the Body of Delegates or the Executive Council.

"(*b*) Any matter arising out of the interpretation of the Covenant establishing the League.

"(*c*) Any dispute which, with the consent of the Court and the Executive Council, any of the parties may wish to have submitted to it."

The Italian and British Delegations thought it preferable to leave to the Executive Council, who applied the Covenant, the duty of resolving questions of interpretations. After discussion it was decided to omit paragraph (*b*); to change "any of the parties" to "both parties" in paragraph (*c*), and accept the rest of the amendment in principle. It was proposed to the Drafting Committee for incorporation in the

text together with the British amendment which proposed to add at the end of the article the words " and also any issue referred to it by the Executive Council or Body of Delegates ". (*Minutes*, pp. 80-83.)

The Belgian Delegation proposed the following amendment which was intended as a new article:

" In the event of the parties to a dispute not agreeing on the interpretation to be given to an arbitration Convention between them, the question shall be referred to a special tribunal composed as follows: each party shall nominate one member of the Executive Council and one member of the Permanent Court of International Justice; two members shall be nominated by the above Court from among its own members; an additional member shall be selected by the Executive Council from among its members; this tribunal shall nominate its own president from among those of its members belonging to the Permanent Court of International Justice." (*Minutes*, pp. 80, 83.)

Opposed by Italian, French and British Delegations. Amendment withdrawn. (*Minutes*, p. 81.)

M. LARNAUDE (France) called attention to a letter addressed by the Swedish Delegation in which request was made that a court might be established by the Assembly rather than by the Council, in order to give it a legal rather than a political character. M. Larnaude thought the Members should be selected by the Council, but that certain qualifications of ability and fitness should be required so as to allay the anxiety of neutral Powers and that the choice would not fall on mere politicians. The Czechoslovak Delegate remarked that the Court would have to decide not only questions of law, but political questions as well.

Lord ROBERT CECIL (British Empire) did not

approve of the Covenant defining conditions under which the Members of the Court should be appointed. He said that as the plan for a Court of Justice would be submitted to the Members of the League in reality the Assembly would establish the Court. (*Minutes*, pp. 108-109.)

ARTICLE XV[1]

(Article XIII. of Original Draft)

If there should arise between Members of the League any dispute likely to lead to a rupture which is not submitted to arbitration as above, the Members of the League agree that they will submit the matter to the Council. Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof.

For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case with all the relevant facts and papers, and the Council may forthwith direct the publication thereof.

The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate.

If the dispute is not thus settled, the Council, either unanimously or by a majority vote, shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto.

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same.

If a report by the Council is unanimously agreed to by

[1] *References in Minutes of the Commission on the League of Nations*, pp. 27, 28, 37, 81, 82, 83, 84, 109-110.

the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report.

If the Council fails to reach a report which is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice.

If the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement.

The Council may in any case under this Article refer the dispute to the Assembly. The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council.

In any case referred to the Assembly, all the provisions of this Article and of Article XII. relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute.

Article XV., which provides for the settlement of disputes submitted to the Council, existed as Article

XIII. of the original draft; some changes were made and new paragraphs were added. The principal discussion centred on the powers of the Executive Council as outlined in paragraph 6. The Belgian, French, Serbian and Greek Delegates wished to increase its powers and were opposed by the British and American Delegates.

Proposals and Discussions

Paragraph 2

The phrase " as promptly as possible " was added at the instance of the Serbian Delegate. (*Minutes*, p. 27.)

The words " and the Council may forthwith direct the publication thereof " were suggested by the British Delegation. (*Minutes*, p. 27.) This was not to affect the right of the parties to publish whatever documents they themselves might think pertinent to the dispute.

Paragraph 6

To paragraph 6, in which Members agree not to go to war with any country which complies with recommendations in a report unanimously agreed to by the Council, the Belgian Delegate proposed the following amendments: For the words " If the report is unanimously agreed to by the Members ", substitute the words " If the report is agreed to by the majority of the Members ", and for the last sentence substitute the words: " If the report is unanimously agreed to by the Members of the Council other than the parties to the dispute, the High Contracting Parties agree that they will carry out in full good faith the decision that has been rendered ". (*Minutes*, pp. 28, 37.)

These proposals were discussed at length, the French, Serbian and Greek Delegates supporting

them. The British and American Delegates did not think it desirable to give mandatory effect to the decisions of a majority of the Council. The Greek Delegate in agreement with the French Delegate urged that in regard to the second amendment the Council should be able to secure the satisfaction of the claims of the injured party to a dispute in cases where the Council had unanimously reported in favour of these claims. He also suggested that some mandatory effect might safely be given to the decisions of a large majority of the Council, such as a majority of four out of five of the Great Powers and three out of four of the Small Powers.

A sub-committee, composed of M. Hymans (Belgium), M. Bourgeois (France), Lord Robert Cecil (British Empire) and M. Veniselos (Greece) was appointed to draft the amendments in the sense of the Commission's discussion. (*Minutes*, p. 28.)

This committee added the following paragraph: "And that, if any party shall refuse so to comply, the Council shall consider what steps can best be taken to give effect to their recommendation". (*Minutes*, p. 37.) This paragraph was withdrawn later at the suggestion of President Wilson. Lord Robert Cecil did not wish to insist on it, since the Council would always be in a position to act as it thought fit. (*Minutes*, p. 109.)

Paragraph 7

Paragraph 7, in which the members reserve the right to take action if the Council fails to reach a unanimous agreement, was added at the instance of the Drafting Committee. (*Minutes*, p. 109.) M. Bourgeois (France) said that the whole idea of obligation now disappeared, and it would be necessary to conclude separate alliances. (*Minutes*, p. 109.)

Lord Robert Cecil (British Empire) said that

defensive alliances would not be incompatible with the object of the League, if they were entered into in accordance with the provisions of Article XV. (*Minutes*, p. 109.)

Paragraph 8

Paragraph 8, on a dispute which is found to be within domestic jurisdiction, was added at the suggestion of President Wilson. (*Minutes*, p. 81.)

Paragraph 9

The last phrase of paragraph 9, which provides a time limit in which a party to a dispute has the right to refer the dispute from the Council to the Assembly, was added at the suggestion of M. Veniselos. (*Minutes*, pp. 28, 37.)

Last Paragraph

The section of the last paragraph which provides that a recommendation of the Assembly shall have the same force as a recommendation of the Council under certain specified conditions was proposed by Lord Robert Cecil (British Empire) on behalf of the Greek Delegate. (*Minutes*, pp. 81, 83.)

At the suggestion of President Wilson the following was omitted:

" If no such unanimous report can be made, it shall be the duty of the majority and the privilege of the minority to issue statements indicating what they believe to be the facts and containing the recommendations which they consider just and proper." (*Minutes*, p. 81.)

M. Hymans (Belgium) proposed the following amendment:

" It shall be lawful for States to conclude special Conventions intended to eliminate any possibility of war between them, whether by agreeing to accept the decisions of a simple majority of the Executive Council,

or by agreeing to any other mode of settling disputes." The British and Italian Delegations opposed. M. Hymans withdrew his amendment, as he felt the object of his amendment was sufficiently safeguarded. (*Minutes*, pp. 81, 82, 84.)

The British Delegation proposed the following as a new article:

"The Executive Council may formulate plans for the establishment of a system of commissions of conciliation and may make recommendations as to the method of employing such commissions in the settlement of such disputes as are not recognized by the parties as suitable for arbitration." (*Minutes*, pp. 82, 84.)

The neutral countries had expressed a great desire that the League should contain some conciliatory organ of a non-political character. (*Minutes*, p. 82.)

President WILSON (United States) said that the Executive Council was already competent to name such Commissions, inasmuch as it had the right to suggest methods of conciliation.

The Amendment was withdrawn. (*Minutes*, pp. 82, 84.)

ARTICLE XVI[1]

(Article XIV. of Original Draft)

SHOULD any Member of the League resort to war in disregard of its covenants under Articles XII., XIII. or XV., it shall ipso facto *be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not.*

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this article, in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the

[1] *References in Minutes of the Commission on the League of Nations*, pp. 28, 29, 41, 42, 62, 82, 103, 110. *Preliminary Peace Conference Protocol*, No. 5, p. 4.

League which are co-operating to protect the covenants of the League.

Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon.

The sanctions of Article XVI. with the exception of the last paragraph apply to breaches of the Covenant involving a resort to war. *Commentary on the Covenant.* With minor changes this is the same as Article XIV. of the original draft. The last paragraph, which was added at one of the last meetings, is intended to meet the case of a State which after violating its covenants attempts to retain its position on the Assembly and Council. The question of the passage of troops was the only point which created much discussion. M. Bourgeois (France) thought it a necessary provision, President Wilson (United States) thought it raised a very serious question, Lord Robert Cecil (British Empire) said that as the Drafting Committee had been equally divided they had suggested that passage should be accorded " at the request of the Council ". This amendment, however, had been withdrawn.

Proposals and Discussions

Paragraph 1

Articles XIII. and XV. were brought under the sanctions of Article XVI. at the request of the French Delegation, who wished also to include Article VIII. This was opposed by the British Delegation. (*Minutes*, pp. 41, 42, 82.) After the word " prevention " in the first paragraph the words " so far as possible " were

omitted at the suggestion of the French Delegation. (*Minutes*, p. 62.)

Paragraph 2

The words "to the several Governments concerned" were inserted after the word "recommend" at the suggestion of the British Delegation. (*Minutes*, p. 82.)

Paragraph 3

Lord ROBERT CECIL (British Empire) on behalf of the Drafting Committee proposed to insert before the phrase referring to the passage of troops the words "upon the request of the Council". Amendment withdrawn. (*Minutes*, p. 110.)

President WILSON (United States) remarked that the passage of troops raised a very serious question, calculated to give rise to discussions which might delay the military action of the League. (*Minutes*, p. 110.)

M. BOURGEOIS (France) said that the obligation to permit the passage of troops applied to States Members of the League who were confronted with an unanimous decision of the Council. If this provision were struck out there would be a danger of isolating a State which was forced to resist an aggressive State more powerful than itself. (*Minutes*, p. 110.)

Lord ROBERT CECIL (British Empire) stated that the Drafting Committee had been equally divided over the question of the right of passage. The Committee had finally proposed that this right should be accorded to the interested parties "at the request of the Council" and not *ipso facto* as was provided in the case of economic measures.

President WILSON (United States) thought that a number of the members of the Commission were opposed to the insertion of this provision relative to the right of passage of troops.

The Amendment was withdrawn. (*Minutes*, p. 110.)

The words "take the necessary steps to" were added at the suggestion of the British Delegation. (*Minutes*, p. 82.)

Last Paragraph

The last paragraph providing for an expulsion from the League in certain extraordinary circumstances was added at one of the last meetings. (*Preliminary Peace Conference Protocol*, No. 5, p. 4.)

ARTICLE XVII[1]

(Article XV. of Original Draft)

In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just. If such invitation is accepted, the provisions of Articles XII. to XVI. inclusive shall be applied with such modifications as may be deemed necessary by the Council.

Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances.

If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article XVI. shall be applicable as against the State taking such action.

If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute.

This article provides for the peaceful settlement of disputes of States not Members of the League. It

[1] *References in Minutes of the Commission on the League of Nations*, pp. 28, 37, 84.

asserts the claim of the League that no State, whether a Member of the League or not, has the right to disturb the peace of the world until peaceful methods of settlement have been tried. *Commentary on the Covenant.* Article XVII. is the same as Article XV. of the original draft with a few changes and was adopted with little discussion.

Proposals and Discussions

The following words "upon such conditions as the Council may deem just" were added to the end of the first sentence at the suggestion of the British Delegation. (*Minutes*, pp. 28, 37.)

At the instance of the Italian Delegation supported by the French Delegation the words "shall be invited to accept the obligations of membership in the League for the purposes of such dispute" were substituted for the words "shall be invited to become *ad hoc* members of the League". (*Minutes*, pp. 28, 37.)

The word "Council", the last word of paragraph 1, was substituted for the word "League" at the suggestion of the British Delegation. (*Minutes*, p. 84.)

The words "provisions of Articles XII. to XVI. inclusive" were substituted for "above provisions" at the suggestion of the British Delegation. *Minutes*, p. 84.)

ARTICLE XVIII[1]

(Article XXI. of Original Draft)

EVERY treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.

Article XVIII. provides for the registration and publication of treaties. This appeared in the original draft with the exception of the last sentence, which was added at the instance of President Wilson (United States). (*Minutes*, p. 34.) A few verbal changes were made and it was agreed that this article referred only to new treaties. (*Minutes*, p. 34.) It appeared in the original draft as Article XXI.; it was changed to Article XXIV. (*Minutes*, p. 57), to Article XXIII. (*Minutes*, p. 70), and appeared in final draft as Article XVIII.

[1] *References in Minutes of the Commission on the League of Nations*, pp. 34, 39, 52, 57, 65, 70.

ARTICLE XIX[1]

THE Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.

Article XIX. provides for the reconsideration of treaties which have become inapplicable. It did not appear in the original draft, but was proposed by the British Delegation and accepted as Article XXIII. with a change of wording proposed by President Wilson. (*Minutes*, p. 40.) It was later listed as Article XXV. (*Minutes*, p. 58), then as Article XXIV. (*Minutes*, p. 70), and appeared in final draft as Article XIX. (*Minutes*, p. 40.)

Proposals and Discussions

M. KRAMAR (Czechoslovakia) observed that if the Assembly were to become the judge of all treaties, it would have powers like those of an international Parliament.

Lord ROBERT CECIL (British Empire) said that since the Assembly could not act except by unanimous vote, there could be no objection on that score.

M. BOURGEOIS (France) thought that there was no other practicable way in which to make the principle effective. He said that it was the duty of the Assembly to give publicity to treaties from time to

[1] *References in Minutes of the Commission on the League of Nations*, pp. 40, 58, 70.

time and that in this fashion it would build up the Corpus Juris of international life. If it discovered objectionable features it might require an explanation from the Government concerned before registering the treaty. This plan of procedure would protect the independence of States.

M. Reis (Portugal) asked if the Assembly or Council would have the right to refuse to register a treaty, and was answered in the negative.

ARTICLE XX[1]

(Article XXII. of Original Draft)

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings inter se *which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.*

In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations.

Article XX., which provides for existing treaties which are inconsistent with terms of the Covenant, is the same as Article XXII. of the original draft; it was changed to Article XXVI. (*Minutes*, p. 58), then to Article XXV. (*Minutes*, p. 70.) The words " or understandings " were inserted after the word " obligations " at the instance of the Chinese Delegation. (*Minutes*, p. 112.)

Proposals and Discussions (*Minutes*, pp. 35-36)

M. Larnaude (France) asked in reference to the abrogation of whatever is inconsistent with this text what authority would pass upon the question of inconsistency.

[1] *References in Minutes of the Commission on the League of Nations*, pp. 35-36, 58, 65, 70, 112.

President WILSON (United States) replied that it was probably not possible to fix in advance the authority which should decide this question. If a nation found itself embarrassed by a treaty, it was possible for it to carry the question before the League. The sanctions of this principle would lie in public opinion. If the treaty were discovered to conflict with the general principles laid down in the Covenant, it would be morally impossible to sustain such a treaty. He added that every public declaration constituted a moral obligation, and the decision of the court of public opinion would be much more effective than that of any tribunal in the world, since it was more powerful and was able to register its effects in the face of technicalities. Frequently the law decided one way and public opinion gave judgment in a manner that was broader and more equitable.

M. LARNAUDE (France) said that doubtless we were all controlled by public opinion, but in countries like England and America, where the idea of equality had gone a long way, would they give to public opinion power to decide questions regarding their written law?

M. ORLANDO (Italy) said that this Article was very important, for it set a limitation upon the freedom of Governments to enter into engagements, and he asked if it was the spirit of the Covenant to admit of alliances between States. M. Veniselos had told them that he believed defensive alliances to be admissible, but, as a matter of fact, M. Orlando added, one never made an " offensive " alliance, and asked, Who would pass upon their nature? A tribunal seemed too rigid a body, while, on the other hand, the Council seemed admirably qualified to decide the question.

M. VESNITCH (Serbia) said he thought that it would be wiser to submit questions under this Article to the Council. He said it might well happen that public opinion would be guided by powerful currents whose direction it would be difficult to foresee.

M. VENISELOS (Greece) said that if there was any disagreement upon interpretation Article XVIII. covered the case. He added that should he make a defensive agreement he would submit it to the League, and if it were contrary to the laws of the League the Council would take it under consideration.

Lord ROBERT CECIL (British Empire) said that the Secretary-General would lay the treaty before the Council, which would have the power to decide.

M. HYMANS (Belgium) stated that there seemed to be a general agreement that defensive alliances were not inconsistent with the principles of the League; but there was one case in which even offensive alliances were permissible: Where there was a dispute, and where the Council had not given an unanimous decision, each side might make war. In that case, was not one of the parties justified in seeking allies?

M. KRAMAR (Czechoslovakia) said that even defensive alliances, as M. Orlando interjected, were not in accordance with the idea of the League. A separate alliance could not be allowed if it was not agreed to by the Council. It might be useful for several nations to conclude a defensive alliance, but it would have to be submitted to the Council and validated by it.

President WILSON (United States) said it was the thought of the Article that an alliance should not be held valid unless it was recorded.

M. BOURGEOIS (France) stated that the obligation of recording appeared adequate so far as new treaties

were concerned, but asked what would be the status of treaties recorded in the past?

President WILSON (United States) said that it rested with the nations themselves to decide whether they wished to be relieved of their imprudent obligations.

ARTICLE XXI[1]

NOTHING in this Covenant shall be deemed to affect the validity of international engagements such as treaties of arbitration or regional understandings like the Monroe Doctrine for securing the maintenance of peace.

Article XXI. states that the Covenant does not abrogate any agreements or regional understandings so long as they are not inconsistent with its own terms. The Monroe Doctrine is noted as example of a regional understanding of this kind. This article was inserted at the instance of President Wilson (*Minutes*, p. 95), who, in the course of the animated discussion which followed, stated that the Covenant was the logical extension of the Monroe Doctrine and the international acceptance of its principles, that while there was no fear in America that the Monroe Doctrine was contrary to the obligations of the Covenant there was a fear that the Covenant might to some extent invalidate the Monroe Doctrine. The French Delegation vigorously opposed this amendment and made several counter-proposals, all of which were objected to by President Wilson and the British Delegation, which supported President Wilson throughout the discussion. It was feared that the French proposals would create an impression that there was an incompatibility between the Monroe Doctrine and the Covenant. The French Delegation first objected to it as it was the only provision which concerned a

[1] *References in Minutes of the Commission on the League of Nations*, pp. 95-99, 110-112. *Preliminary Peace Conference Protocol*, No. 5, pp. 18-19.

particular country; later they wished to have the Monroe Doctrine explained. Their amendment was worded to indicate that the Monroe Doctrine must not create obstacles to the fulfilment of the obligations of the Covenant. They feared that it would prevent America from helping Europe and Europe from taking a hand in America. The Honduran Delegation also urged that the Doctrine be defined. (*Preliminary Peace Conference Protocol*, No. 5, pp. 18-19.) Article XXI. was first suggested as an amendment to Article X., later as an amendment to Article XX.

Proposals and Discussions

M. Reis (Portugal) thought the Monroe Doctrine should be defined. He feared that it was not consistent with the Covenant. (*Minutes*, pp. 95-96.)

The French Delegation proposed the following two amendments (*Minutes*, pp. 110-112):

"International understandings intended to assure the maintenance of peace, such as Treaties of arbitration, are not considered as incompatible with the provisions of this Covenant. Likewise with regard to understandings or doctrine pertaining to certain regions, such as the Monroe Doctrine, in so far as they do not in any way prevent the signatory States from executing their obligations under this Covenant." (*Minutes*, p. 111.)

They proposed a new draft in which the second sentence was now to read:

"Similarly with regard to all other arrangements, particularly those pertaining to certain regions, such as arise out of the Monroe Doctrine, in so far as they conduce to the maintenance of the peace which it is the object of this Covenant to assure." (*Minutes*, p. 112.)

The Honduran Delegation proposed the following amendment:

"This doctrine, which has been supported by the United States of America since 1823, when it was proclaimed by President Monroe, means that all the Republics of America have the right to an independent existence, and that no nation can there acquire by conquest any portion of their territory nor intervene in their internal government or administration, nor perform there any act which can diminish their autonomy or wound their national dignity. The Monroe Doctrine does not hinder the countries of Latin America from confederating or otherwise uniting themselves in the search for the best way of fulfilling their destiny." (*Preliminary Peace Conference Protocol*, No. 5, pp. 18-19.)

Mr. Koo (China) proposed to add the following clause after the word "understanding": "which are not incompatible with the terms of this Covenant and which are intended to assure the maintenance of peace, such as the Monroe Doctrine". Rejected. (*Minutes*, p. 112.)

During the discussion President Wilson made the following statements:

M. Reis asked whether the Monroe Doctrine would prevent League action in American affairs. (*Minutes*, p. 96.)

President Wilson replied in the negative. The Covenant provided that the Members of the League should mutually defend one another in respect of their political and territorial integrity. The Covenant was therefore the highest possible tribute to the Monroe Doctrine. It adopted the principle of the Monroe Doctrine as a world doctrine. It was an international acceptance of the principle by which the United States had said that it would protect the political

independence and territorial integrity of other American States. The Commission should study, not theoretical interpretations which had been placed upon the Monroe Doctrine, but actions of the United States which had been taken thereunder.

His colleagues in America had asked him whether the Covenant would destroy the Monroe Doctrine. He had replied that the Covenant was nothing but a confirmation and extension of the doctrine. He had then been asked whether, if this were so, there would be any objection to making a specific statement to that effect in the text. It was by way of concession to this reasonable request that he was asking the Commission to state definitely something which was already implied. (*Minutes*, p. 96.)

President WILSON said that should the Monroe Doctrine in future be interpreted in a manner prejudicial to the peace of the world, the League of Nations would be there to deal with it. He was prepared, if necessary, to delete the word "regional": it was perhaps hardly applicable to so large a territory as the western hemisphere. (*Minutes*, p. 97.)

President WILSON again explained that any understanding which infringed upon the territorial integrity or political independence of any State would be inconsistent with the Covenant. Any State which signed the Covenant obliged itself immediately to abrogate such an understanding. The inclusion of this reference to the Monroe Doctrine was in effect nothing but a recognition of the fact that it was not inconsistent with the terms of the Covenant. (*Minutes*, p. 97.)

President WILSON thought it might help the discussion if he explained the history of the Monroe Doctrine. At a time when the world was in the grip of absolutism, one of the two or three then free States of Europe suggested to the United States that they

should take some political step to guard against the spread of absolutism to the American Continent. Among these States was England. Acting upon this suggestion the principles of the Monroe Doctrine were laid down, and from that day to this they had proved a successful barrier against the entrance of absolutism into North and South America. Now that a document was being drafted which was the logical extension of the Monroe Doctrine to the whole world, was the United States to be penalized for her early adoption of this policy? A hundred years ago the Americans had said that the absolutism of Europe should not come to the American Continent. When there had come a time when the liberty of Europe was threatened by the spectre of a new absolutism, America came gladly to help in the preservation of European liberty. Was this issue going to be debated, was the Commission going to scruple on words at a time when the United States was ready to sign a Covenant which made her for ever part of the movement for liberty? Was this the way in which America's early service to liberty was to be rewarded? The Commission could not afford to deprive America of the privilege of joining in this movement. (*Minutes*, p. 98.)

ARTICLE XXII [1]

(Article XVII. of Original Draft)

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the Mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their

[1] *References in Minutes of the Commission on the League of Nations,* pp. 30, 31-32, 37, 38-39, 52, 56-57, 62, 69, 85, 104-105. *Minutes of the Supreme Council, January 24, January 27, January 28, January 30.*

existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience or religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of Mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to

advise the Council on all matters relating to the observance of the Mandates.

Article XXII. provides that the colonies and territories as yet incapable of standing alone, which as a consequence of the war have ceased to be under the sovereignty of the States which formerly governed them, are to be administered for the benefit of the inhabitants by selected States under the general supervision of the League. The first paragraph, except for the last clause "and that securities", etc., appeared in the original draft, also the provisions referring to the military training of the natives and equal trade opportunities for Members of the League. The rest of the article was proposed by General Smuts (*Minutes*, p. 30), the text based upon the "Draft Resolutions in reference to Mandatories" presented to the Conference of the five Powers by Mr. Lloyd George as a compromise after a meeting with the Dominion Premiers. (*Supreme Council Minutes*, January 30.) The first sentence is a modification of the original draft presented to the Commission on the League of Nations which stated certain definite territories to which the provisions of this article should apply, and represents a compromise between the views of the Italian and French Delegations that the territories should not be too closely defined and those of the Portuguese, Belgian and Roumanian Delegations who feared too broad a wording. President Wilson wished to extend the scope of this article to certain territories which had been part of the Russian Empire. Part of this article was Article XVII. in the original draft. During the drafting of the Covenant it appeared as Article XIX. (*Minutes*, pp. 56-57), and as Article XVIII. (*Minutes*, p. 85.)

Proposals and Discussions in Commission on League of Nations

The French Delegation proposed the following amendment:

Substitute the following text: "In conformity with the decisions of the Conference of the Allies the League of Nations regards itself as invested with the moral tutelage of those populations referred to in the Treaty of Peace which have not yet reached the stage of complete development. The character of this tutelage must differ according to the stage of the development of the peoples, the geographical situation of the territory, its economic conditions, and other similar circumstances.

"The conditions and the limits of such tutelage shall be determined by international conventions. The Council of the League of Nations shall indicate the need of new conventions if it deems them necessary to ensure the well-being and development of the populations concerned." (*Minutes*, pp. 30, 32.)

President WILSON (United States) proposed the following new paragraph with the object of extending the scope of the article to certain territories which had been part of the Russian Empire:

"The provisions of this article can also be applied in respect of other peoples and territories, which are not otherwise disposed of in the Treaty of Peace, of which this Covenant forms a part, or are not definitely constituted as autonomous States." (*Minutes*, pp. 30, 32.)

In answer to the point made by the French Delegation that it would be preferable not to place in the same category backward countries like certain African colonies and countries which have a very ancient and very complete civilization, but which have been

oppressed by foreign domination, the Serbian Delegation proposed an amendment intended to facilitate the complete emancipation of these people and their admission into the League, but did not insist on this proposal. (*Minutes*, p. 30. *Verbal changes*, *Minutes*, p. 52.)

The Belgian Delegation proposed that the equality of treatment of all States Members of the League should be established as well in South Africa and the islands of the Pacific as in the other German colonies of Central Africa. He did not see why some of those colonies should be placed under special rules.

General SMUTS (British Empire) requested that the Commission should not discuss this matter, as the very point emphasized by the Belgian Delegation had been the object of long discussions at the Council of Ten before being so decided. (*Minutes*, p. 62.)

(*For discussion of the Mandatory system see Minutes of the Supreme Council, January 24, January 27, January 28, January 30.*)

In the second paragraph the clause " and who are willing to accept it " was inserted after the word " responsibility " at the suggestion of the British Delegation. (*Minutes*, p. 85.)

Proposals and Discussions in Supreme Council

January 24.

Dominion Premiers on colonial questions.

Mr. LLOYD GEORGE: "All he would like to say on behalf of the British Empire as a whole was that he would be very much opposed to the return to Germany of any of these colonies. His reasons for saying so had been put in writing, and he was prepared, if necessary, to circulate the document to the Council ".

President WILSON said that he thought all were

agreed to oppose the restoration of the German colonies. M. ORLANDO and Baron MAKINO agreed.

There was no dissentient, and this principle was adopted, but it was agreed to make no public announcement at the time.

Mr. LLOYD GEORGE then discussed the future regime of the ex-German colonies. He outlined three methods:

(1) Direct control by the League of Nations. He considered this impracticable.

(2) The Mandatory system. "There must be equal economic opportunity for all and a guarantee that the natives would not be exploited either commercially or militarily . . . there would be a right of appeal to the League of Nations if any of the conditions of the trust were broken." "As far as Great Britain was concerned he saw no objection to the Mandatory system."

(3) Direct annexation. Owing to geographical contiguity it might not be wise to insert a tariff barrier between the annexed portions of South Africa and of New Guinea and the Dominion possessions prior to the war. Samoa also should be administered directly by New Zealand.

Mr. HUGHES presented the case for Australia. Australia feared that a foreign Mandatory established in New Guinea might be a "potential enemy", whereas "the security of Australia would threaten no one".

General SMUTS presented the case for South Africa. "He would point out that this territory was not in the same category as other German possessions in Africa. South-West Africa was a desert country only suitable for pastoralists. It could, therefore, only be developed from within the Union itself."

Mr. MASSEY presented the case for New Zealand.

He argued that national safety for New Zealand demanded control over Samoa, and pointed out that joint administration had been a failure in Samoa, the New Hebrides and Egypt.

Sir ROBERT BORDEN said that Canada had no claims to advance, but he wished to endorse the position of the other Dominion Premiers.

January 27. Baron MAKINO presented claims to Kiao-Chow and German claims in Shantung province; also to former German island possessions north of the equator. Japan desired "unconditional cession".

President WILSON urged that the Mandatory system be applied to the German colonies generally, even where, as in South Africa, a British Dominion was Mandatory. A Mandate involved two things: the administration of a district "primarily with a view to the betterment of the conditions of the inhabitants", secondly, no economic discrimination against "the members of the League of Nations". "All countries would pay the same duties; all would have the same right of access." He repudiated the military argument for absolute annexation on the ground that it showed a lack of faith in the League of Nations.

General BOTHA, speaking for South-West Africa, said: "The League of Nations was a long way off and could not possibly know the true requirements of the country. Had there been a large population in German South-West Africa he would have concurred in President Wilson's proposal."

Mr. HUGHES said: "If it were asked what was the best form of government, clearly the most direct form would be the best, and the most indirect form the worst". Therefore the Mandatory system should only be applied where direct government was inapplicable.

January 28. Mr. LLOYD GEORGE said he had

consulted colonial experts on the previous evening. The Mandatory system could be applied to the territories conquered by the United Kingdom; "the Dominions' case, however, was a special case. . . . He did not think that a special exception in favour of the Dominions would spoil the whole case; possibly the reverse might be true."

Mr. MASSEY said: "The difference between the Mandatory principle and that instituted by New Zealand was the difference between leasehold and freehold tenure. No individual would put the same energy into a leasehold of unimproved country as into a freehold."

Baron MAKINO and Mr. Koo spoke on the Kiao-Chow and Shantung question:

Baron MAKINO said: "Japan was in actual possession of the territory under consideration; it had taken it by conquest from Germany; before disposing of it to a third party it was necessary that Japan should obtain the right of free disposal from Germany".

Mr. Koo said: "Even if the lease had not been terminated by China's declaration of war, Germany would be incompetent to transfer it to any other Power than China because of an express provision therein against transfer to another Power".

January 28. M. SIMON (France) presented arguments for a French Mandate in Cameroons and Togoland. He agreed with Mr. Lloyd George in condemning direct international control, and he hoped the New Hebrides condominium would soon be terminated. He also feared that under the Mandatory system nothing would be done to develop a country, as "there would be little inducement for the investment of capital and for colonization in a country whose future was unknown". He favoured the third system, outright annexation, but said that France

would concede the principle of the " open door " in the annexed colonies.

President WILSON said " the discussion so far had been a negation in detail of the whole principle of Mandatories ".

Mr. Balfour believed objections could be met by giving security of tenure to the Mandatory power.

M. ORLANDO said that Italy favoured the principle of Mandates " provided they were equitably applied and also provided that she could participate in the work of civilization ". Different degrees of sovereignty could be applied in different cases.

M. CLEMENCEAU said: " Since Mr. Lloyd George was prepared to accept the Mandate of a League of Nations he would not dissent from the general agreement, merely for the sake of the Cameroons and Togoland. But when President Wilson asked that every question should be referred to the League of Nations he felt a little nervous."

January 30. Mr. LLOYD GEORGE announced the circulation of a Report to the Powers which " did not represent the real views of the colonies; but had been accepted by them as an attempt at a compromise ".

President WILSON considered this document " a long stride towards the composition of their differences ", but he thought it impossible finally to determine at the time the colonial settlement and the exact status of a Mandate.

Mr. LLOYD GEORGE urged immediate acceptance of the proposed compromise, as " it was only with the greatest difficulty that the Dominions had been prevailed upon to accept the draft submitted ".

M. ORLANDO again urged that " Italy obtain its share of Mandates ".

January 30. Mr. MASSEY, Mr. HUGHES and

General BOTHA gave the position of the colonies, supporting the compromise draft.

Sir ROBERT BORDEN (p. 4) moved an amendment to clause 7 of the compromise draft, which was agreed on.

M. PICHON said that France could not renounce the right to raise troops from all colonial countries under French control.[1] M. CLEMENCEAU supported this.

Mr. LLOYD GEORGE pointed out that while the clause in question (clause 7 of the compromise draft) prevented the raising of great native armies in Mandatory territories, it did not prevent a native force for "police purposes and the defence of territory". M. Clemenceau was satisfied.

Mr. LLOYD GEORGE moved the insertion of "Kurdistan" in the clause on Turkish territories.

M. ORTS presented the case of the Belgian Congo. They desired a small area in German East Africa.

[1] The appendix to this day's minutes gives the Resolution on Mandatories as finally adopted, and which forms a large part of Article XXII. of the Covenant.

ARTICLE XXIII[1]

SUBJECT to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League—

(*a*) *will endeavour to secure and maintain fair and humane conditions of labour for men, women and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations;*

(*b*) *undertake to secure just treatment of the native inhabitants of territories under their control;*

(*c*) *will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs;*

(*d*) *will entrust the League with the general supervision of the trade in arms and ammunition with the countries in which the control in this traffic is necessary in the common interest;*

(*e*) *will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated*

[1] *References in Minutes of the Commission on the League of Nations*, pp. 31, 32, 33, 34, 57, 62, 64, 85. *Supreme Council Minutes, January* 23.

during the war of 1914–1918 shall be borne in mind;

(*f*) *will endeavour to take steps in matters of international concern for the prevention and control of disease.*

Article XXIII. provides for the protection of labour, native inhabitants, the control of the white-slave traffic, the traffic in drugs and opium, the equitable treatment of commerce and the control of disease. It is a combination of several articles which appeared in the original draft, with additional clauses. With the exception of paragraph (*e*) referring to the equitable treatment of commerce this article was accepted with little discussion. Paragraph (*a*), which existed in part as Article XVIII. in the original draft, provides for the protection of labour. At the suggestion of the British Delegation the last part was added which provides for a permanent international labour organization. (*Minutes*, pp. 31, 32. *Supreme Council*, January 23.) At President Wilson's suggestion the words "for men, women and children" were added after the words "fair and humane conditions of labour". (*Minutes*, p. 31.) This paragraph was changed to Article XX. (*Minutes*, pp. 57, 62), was combined with other articles to make up the present article and was listed as Article XIX. (*Minutes*, p. 85.) Paragraph (*b*), which refers to native inhabitants, and paragraph (*c*), which refers to the white-slave traffic and traffic in opium and drugs, were added at the instance of the British Delegation. (*Minutes*, p. 85.) Paragraph (*d*), which refers to the traffic in arms, existed in the original draft as Article XVI. The British and American Delegations requested that note should be made that this article applied to the countries which were mentioned in the Draft Arms Traffic Con-

vention. (*Minutes*, p. 62.) This paragraph was listed as Article XVIII. (*Minutes*, p. 56), and was combined with other articles to make the present article. (*Minutes*, p. 85.) Paragraph (*e*), which provides for the equitable treatment for commerce for Members of the League, existed in the original draft as Article XX. with the exception of the last sentence which makes special provision for the regions devastated during the war. This was added at the suggestion of President Wilson to meet the request of France and Belgium for special protection during the period of reconstruction. (*Minutes*, pp. 33-34, 64.)

Proposals and Discussions

The British Delegation proposed the following amendment, providing for a permanent Conference and Labour Office, which was adopted with modifications.

" Substitute the following text:

" The High Contracting Parties will endeavour to secure and maintain fair and humane conditions of labour, both in their own countries and in all countries to which their commercial and industrial relations extend; and to that end agree to establish as part of the organization of the League a permanent Conference and Labour Office, in accordance with the provisions of the Convention annexed hereto, and to adopt and be bound by all other provisions contained therein." (*Minutes*, pp. 31, 32.)

The French Delegation proposed two amendments, the first looking towards the establishment of a Financial Commission; the other establishing the International Bureau of Labour. After some discussion the amendments were withdrawn. (*Minutes*, p. 85.)

The French Delegation proposed an addition to the article as follows: " Il y a lieu de créer une

section économique de la Société des Nations en vue d'étudier et de réaliser dans l'intérêt de la civilisation les grandes entreprises économiques d'ordre international ".

President WILSON opposed, as he thought that the proposed new clause admitted a most dangerous principle which was known in his country as the principle that " the flag follows the dollar ".

The amendment was withdrawn. (*Minutes*, p. 85.)

The Belgian Delegation proposed a new amendment that the League should endeavour to intensify agricultural production and should appoint a permanent Agricultural Commission. The amendment was withdrawn, as the work was already done by the Institute of Rome: it had already been agreed that all existing international organizations might pass to the League. (*Minutes*, p. 85.)

ARTICLE XXIV[1]

THERE shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent. All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League.

In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable.

The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League.

Article XXIV. provides that all International Bureaux may be placed under the direction of the League. It was added with little discussion at one of the later meetings. The first paragraph was suggested by the Drafting Committee (*Minutes*, p. 52), the second and third paragraphs by the British Delegation. (*Minutes*, p. 86.)

[1] *References in the Minutes of the Commission on the League of Nations*, pp. 52, 57-58, 70, 86.

ARTICLE XXV[1]

THE Members of the League agree to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world.

Article XXV. mentions the Red Cross as one of the International organizations which is to connect its work with the League. This provision was made at one of the later meetings, and appeared first as Article XXIII. (*Minutes*, p. 105.)

Proposals and Discussions

The French Delegation thought it a mistake to give an exclusive position to the Red Cross without reference to like associations.

The British Delegation replied that paragraph (*f*) of Article XXIII. would cover this point. (*Minutes*, p. 113.)

[1] *References in the Minutes of the Commission on the League of Nations*, pp. 105, 113.

ARTICLE XXVI[1]

AMENDMENTS to this Covenant will take effect when ratified by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly.

No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League.

Article XXVI. referring to Amendments to the Covenant did not appear in the original draft. It was added as Article XXIV. at the suggestion of Lord Robert Cecil (*Minutes*, p. 41), and appeared as Article XXVII. (*Minutes*, p. 58.) The discussion centred on the vote on new amendments in the Assembly. The Small Powers, and especially Greece, were opposed to the majority vote suggested by the British Delegation on the grounds that they would lose still more of their authority, and proposed a three-fourths vote. (*Minutes*, pp. 41, 86.) At the last meeting the provision was made granting a State the option of accepting an amendment or withdrawing. This was added to avoid constitutional difficulties suggested by the Brazilian and Portuguese Delegates. (*Minutes*, p. 113.)

Proposals and Discussions

M. VENISELOS (Greece) thought that it should not be made too difficult to modify the Covenant, and

[1] *References in the Minutes of the Commission on the League of Nations*, pp. 41, 52, 58, 86, 88, 113.

thought that it would be better to provide for a three-fourths majority. (*Minutes*, p. 41.)

M. LARNAUDE (France) said that the question was whether or not we wanted a League in which the long-standing rules of international law would apply in full force. He asked if they were setting up merely a treaty or making a permanent constitution, creating a real institution higher than States. He said the Covenant, by analogy, resembled the scheme of the Confederation.

President WILSON (United States) observed that when the nations subscribed to the Covenant they would clearly be bound by the new text.

M. ORLANDO (Italy) was of the opinion that a State in the minority would be forced to remain in the League. He said that new laws should be made to accord with new facts.

M. LARNAUDE (France) said that the Delegates would be officials whose position was like that of judges who cannot be divested of office at pleasure. He said that they must have the international point of view and a kind of independence.

M. VESNITCH (Serbia) thought that if a change in the Covenant should be accepted by the nine Powers of the Council and two-thirds of the Body of Delegates, no State could think that it was directed against its peculiar interests.

M. VENISELOS (Greece) supported it, but thought a three-quarters majority should be required.

M. PESSOA (Brazil) was of the same opinion.

The Belgian Delegation supported the above views on the understanding that it should apply only to the " fundamental clauses ". The article was then adopted. (*Minutes*, p. 41.)

Lord ROBERT CECIL (British Empire) proposed to delete " three-quarters " and substitute " a majority "

in order to remove the impression that the Covenant was unalterable. (*Minutes*, p. 86.)

M. Veniselos (Greece) considered that the amendment exposed the Small Powers to the risk of losing more of their authority.

President Wilson (United States) said he thought that the subject under discussion depended on the amendment which he wished to suggest in reference to withdrawal from the League.

For discussion of this provision see Article I. of this treatise. (*Minutes*, p. 86.)

Lord Robert Cecil's amendment was adopted. (*Minutes*, p. 88.)

ARTICLE DROPPED FROM THE ORIGINAL DRAFT[1]

THE following clause, which does not appear in the final draft, was Article XIX. of the original draft, and changed to Article XXI. during the debate. (*Minutes*, p. 57).

"The High Contracting Parties agree that they will make no law prohibiting or interfering with the free exercise of religion, and that they will in no way discriminate, either in law or in fact, against those who practise any particular creed, religion or belief whose practices are not inconsistent with public order or public morals." (*Minutes*, p. 7.)

It created an animated discussion, the American Delegation supported it as it provided a means for the prevention of religious persecutions, it was opposed by the Belgian, Portuguese, Italian and French Delegations on the grounds that it would be difficult to word it so as to avoid conflict with the constitution of certain countries and that it might be used by political parties against governments. The French Delegation thought that Article XI., in which internal troubles which threatened peace were mentioned, would provide for the cases foreseen in the article. Finally the Japanese Delegation urged that the question of race should be included and proposed an amendment to that effect. (*Minutes*, pp. 63-64.) The amendment was rejected, and it was at last decided that as the article raised such extremely serious problems it

[1] *References in the Minutes of the Commission on the League of Nations*, pp. 31, 32, 36, 37, 39, 52, 57, 62-64.

should be dropped from the Covenant. (*Minutes*, p. 64.)

Proposals and Discussions in relation to Dropped Article

Lord ROBERT CECIL (British Empire) proposed to amend the wording as follows:

"Recognizing religious persecution and intolerance as fertile sources of war, the High Contracting Parties agree that political unrest arising therefrom is a matter of concern to the League, and authorize the Executive Council, wherever it is of opinion that the peace of the world is threatened by the illiberal action of the Government of any State towards the adherents of any particular creed, religion or belief, to make such representations or take such other steps as will put an end to the evil in question." (*Minutes*, pp. 31, 32.)

The Drafting Committee proposed to substitute the following wording:

"Recognizing religious persecution as a fertile source of war, the High Contracting Parties solemnly undertake to extirpate such evils from their territories, and they authorize the Executive Council, wherever it is of opinion that the peace of the world is threatened by the existence in any State of evils of this nature, to make such representations or take such other steps as it may consider that the case requires." (*Minutes*, pp. 36, 37.) Rejected.

President WILSON (United States) then proposed to adopt the following substitute for the article:

"The High Contracting Parties agree that they will make no law prohibiting or interfering with the free exercise of religion, and they resolve that they will not permit the practice of any particular creed,

religion or belief whose practices are not inconsistent with public order or with public morals to interfere with the life, liberty or pursuit of happiness of their people." (*Minutes*, p. 36.)

M. Bourgeois (France) said that this only confirmed the principle laid down in our declaration of the Rights of Man.

The amendment was adopted. (*Minutes*, p. 36.)

During a later debate Colonel House (United States) stated that President Wilson considered it was important to include this article. (*Minutes*, p. 63.)

M. Larnaude (France) thought it difficult to include a clause on the question, and that in any case the anxieties of President Wilson related to countries not members of the actual League.

M. Reis (Portugal) said that his long residence in Eastern Europe convinced him that conflicts supposed to be religious were almost always racial.

Baron Makino (Japan) proposed the following amendment:

"The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agree to accord, as soon as possible, to all alien nationals of States Members of the League equal and just treatment in every respect, making no distinction, either in law or fact, on account of their race or nationality." (*Minutes*, p. 63.) He also had urged that an amendment providing for the equality of races should be added to the Preamble.

Lord Robert Cecil (British Empire) remarked that this subject had been dealt with in long and difficult discussions. It was a matter of a highly controversial character, and in spite of the nobility of thought which inspired Baron Makino he thought that it would be wiser for the moment to postpone its examination.

Mr. Koo (China) stated that the Chinese Government and people were deeply interested in the question brought up by Baron Makino and that he was in full sympathy with the spirit of the amendment, but would have to await instructions from his Government.

M. Veniselos (Greece) was of the opinion that questions of race and religion would certainly be dealt with in the future by the League, but thought it would be better for the moment not to allude to them.

Several members of the Commission agreed with this view.

The article was dropped from the Covenant, Colonel House reserving the right of President Wilson to raise the question again.

APPENDIX A

COMPOSITION OF THE COMMISSION ON THE LEAGUE OF NATIONS, WHICH DRAFTED THE COVENANT

THE Commission was originally composed as follows:

THE UNITED STATES OF AMERICA:
The President of the United States of America.
Honourable Edward M. House.

THE BRITISH EMPIRE:
The Rt. Hon. the Lord Robert Cecil, K.C., M.P.
Lieutenant-General the Rt. Hon. J. C. Smuts, K.C., Minister of Defence of the Union of South Africa.

FRANCE:
M. Leon Bourgeois, former President of the Council of Ministers and Minister for Foreign Affairs.
M. Larnaude, Dean of the Faculty of Law of Paris.

ITALY:
M. Orlando, President of the Council.
M. Scialoja, Senator of the Kingdom.

JAPAN:
Baron Makino, former Minister for Foreign Affairs, Member of the Diplomatic Council.
Viscount Chinda, Ambassador Extraordinary and Minister Plenipotentiary of H.I.M. the Emperor of Japan at London.

BELGIUM:
M. Hymans, Minister for Foreign Affairs and Minister of State.

BRAZIL:
M. Epitacio Pessoa, Senator, former Minister of Justice.

CHINA:

Mr. V. K. Wellington Koo, Envoy Extraordinary and Minister Plenipotentiary of China at Washington.

PORTUGAL:

M. Jayme Batalha Reis, Envoy Extraordinary and Minister Plenipotentiary of Portugal at Petrograd.

SERBIA:

M. Vesnitch, Envoy Extraordinary and Minister Plenipotentiary of H.M. the King of Serbia at Paris.

At the request of Greece, Poland, Roumania and Czechoslovakia, the following delegates were added to the Commission:

GREECE:

M. Eleftherios Veniselos, President of the Council of Ministers.

POLAND:

M. Roman Dmowski, President of the Polish National Committee.

ROUMANIA:

M. Diamandy, Roumanian Minister Plenipotentiary.

CZECHOSLOVAKIA:

M. Charles Kramar, President of the Council of Ministers.

APPENDIX B

TERMS OF REFERENCE OF THE COMMISSION

THE terms of reference of this Commission were as follows:

"The Conference, having considered the proposals for the creation of a League of Nations, resolved that:

"1. It is essential to the maintenance of the world settlement, which the Associated Nations are now met to establish, that a League of Nations be created to promote international co-operation, to ensure the fulfilment of accepted international obligations and to provide safeguards against war.

"2. This League should be treated as an integral part of the general Treaty of Peace, and should be open to every civilized nation which can be relied on to promote its objects.

"3. The members of the League of Nations should periodically meet in international conference, and should have a permanent organization and secretariat to carry on the business of the League in the intervals between the conferences.

"The Conference therefore appoints a Committee representative of the Associated Governments to work out the details of the constitution and functions of the League."

APPENDIX C

PROPOSALS FOR MAINTENANCE OF FUTURE PEACE DRAFTED BY LORD ROBERT CECIL IN OCTOBER 1916 AND PRESENTED TO THE FOREIGN OFFICE

THE High Contracting Powers further agree that the territorial arrangements hereinbefore set forth shall remain unaltered for the next five years. At, or if any of the High Contracting Powers so demands then before, the end of that period a conference of the High Contracting Powers shall be summoned, and any rearrangements of territory which have become necessary or desirable shall be then considered, and, if agreed upon, shall be forthwith carried out.

If any difference or controversy shall arise between any of the High Contracting Powers with respect to the meaning of any of the articles of this treaty, or with respect to the rights of any of the parties thereto, or with respect to any other matter, a conference of the Powers shall be forthwith summoned, and the controversy shall be submitted to it, and no action shall be taken by any of the parties to the controversy until the conference has met and considered the matter, and has either come to a decision thereon or has failed for a period of three months after its meeting to come to such a decision. Any decision agreed upon at such conference shall be maintained and enforced by all the High Contracting Powers as if it were one of the articles of this treaty.

Each of the High Contracting Powers guarantees and agrees to maintain the provisions of this treaty if necessary by force of arms, and in particular undertakes that if any Power shall refuse or fail to submit any controversy to a conference as provided in the last preceding article of this treaty, or shall otherwise infringe any of the provisions of this treaty, each of the High Contracting Powers shall thereupon cut off all commercial and financial intercourse with the wrongdoing Power, and as far as possible shall prevent such Power from

having any commercial or financial intercourse with any other Power, whether a party to this treaty or not; and it is hereby further agreed that for the purpose of enforcing this provision, any of the High Contracting Powers may detain any ship or goods belonging to any of the subjects of the wrongdoing Power or coming from or destined for any person residing in the territory of such Power, and with the same object may take any other similar steps which may seem desirable or necessary.

APPENDIX D

INTERIM AND FINAL REPORTS OF THE PHILLIMORE COMMITTEE, MARCH 20 AND JULY 3, 1918

Confidential

THE COMMITTEE ON THE LEAGUE OF NATIONS

The Right Hon. Sir Walter G. F. Phillimore, Bart., P.C. (*Chairman*).
Professor A. F. Pollard, M.A.
Sir Julian S. Corbett.
Dr. J. Holland Rose, Litt.D.
Sir Eyre Crowe, K.C.B., K.C.M.G.
Sir William Tyrrell, K.C.M.G.
Mr. C. J. B. Hurst, K.C., C.B.
Mr. A. R. Kennedy (*Secretary*).

INTERIM REPORT

To the Right Hon. A. J. Balfour, P.C., O.M., &c., &c.
Secretary of State for Foreign Affairs.

March 20, 1918.

1. We had the honour to be appointed by you as a Committee to enquire particularly from a juridical and historical point of view into the various schemes for establishing by means of a League of Nations, or other device, some alternative to war as a means of settling international disputes, to report on their practicability, to suggest amendments, or to elaborate a further scheme if on consideration it should be deemed possible and expedient, and to report to you the result of our deliberations.

2. We have held nine meetings in which our attention has been directed mainly to the various proposals for a League of Nations which were formulated in the 16th and 17th centuries and to those which have been put forward since the recent revival of the movement.

3. With regard to other methods of international combinations for avoiding war which were actually attempted during the 19th century, we have not completed our investigation, and without further enquiry into past political experience we would offer no opinion as to whether a modification of those methods or a formal League of Nations is the more promising means of securing the end in view.

4. The earlier projects which aimed at setting up a kind of European Confederation with a supernational authority we have after consideration rejected, feeling that international opinion is not ripe for so drastic a pooling of sovereignty, and that the only feasible method of securing the object is by way of co-operation or possibly a treaty of alliance on the lines of the more recent schemes.

5. We have accordingly carefully considered those schemes, all of which substitute, in place of the earlier idea of confederation, a system working by means of a permanent conference and an arbitral tribunal. None of them, however, in their entirety appear to your Committee to be practicable or likely to meet with acceptance. We have therefore drafted a Convention in which, while embodying their leading ideas, we have endeavoured to avoid their more obvious stumbling-blocks.

6. On the assumption that a League of Nations may be regarded as a possible solution of the problem, we now submit this draft as the best we have been able to devise, to serve as a basis for an interchange of views. In making it the subject of an Interim Report we have been influenced by the consideration that His Majesty's Government may regard it as desirable to initiate such an interchange of views before the termination of the war.

7. The primary object of the proposed alliance will be that whatever happens peace shall be preserved between members of the alliance. The secondary object will be the provision of means for disposing of disputes which may arise between the members of the alliance. Our draft treaty, therefore, divides

itself into four parts : Articles 1 and 2, which stand very much by themselves, are to provide for the avoidance of war : Articles 3 to 12, for the pacific settlement of international disputes; Articles 13 to 17, for the relations between the allied States and States not party to the Convention; while Article 18 provides that this treaty shall override all others.

8. The mutual covenant not to go to war is contained in Article 1. We have not covered all cases. We have provided that no State shall go to war without previously submitting the matter to arbitration or to the Conference of the League, nor while the discussion is pending in debate, nor shall seek any further satisfaction than that which the award or the recommendation of the Conference requires. This leaves untouched the case in which the Conference can make no recommendation, but we are in great hope that this event will be rare. There will be every inducement to the Conference to find a mode of escaping from war, and, at any rate, the time will be so long drawn out that passions will have cooled. The other case omitted is when a State that has given cause of offence refuses to abide by the award or the recommendation of the Conference. It might be suggested that in this case the whole power of the League should be used to enforce submission, but we have felt a doubt whether States would contract to do this, and a still greater doubt whether, when the time came, they would fulfil their contract. Most of the writers on this subject have hesitated to recommend such a provision.

9. It will be noted that the proposed moratorium only extends to actual warfare. Some writers have suggested that there should be no warlike preparations during the period. We have rejected this—

(*a*) because it would be difficult to ascertain what were special warlike preparations;

(*b*) because we would designedly give an opportunity to the most peaceful State which had not kept its armaments up to a high pitch to improve them during the period of the moratorium, in this way discounting to some extent the advantages which a State which kept up excessive armaments would otherwise have had.

10. Article 2 contains the sanction proposed. We have desired to make it as weighty as possible. We have, therefore,

made it unanimous and automatic, and one to which each State must contribute its force without waiting for the others, but we have recognized that some States may not be able to make, at any rate in certain cases, an effective contribution of military or naval force. We have accordingly provided that such States shall at the least take the financial, economic, and other measures indicated in the Article.

11. Article 3 is adapted from Article 38 of The Hague Convention for the Pacific Settlement of International Disputes, 1907.

12. Article 4 expands an idea the germ of which appears in Article 48 of the same Convention; it gives the power to a State to apply *ex parte* to the Conference of the Allied States. Reference to arbitration requires the consent of both parties, but this provision will enable any one State, party to the dispute, to bring its case before the Conference even if the other State is not willing. We have been careful to remember that there will be much jealousy, particularly among the continental Powers of Europe, of any provision which will appear to infringe their independence or sovereignty, and therefore we do not give the Conference, thus appealed to, any power of adjudication, but only one of recommendation.

13. Article 5.—It is in our view desirable that if the Conference be appealed to it shall not fail to act, and, as in cases which will come under Article 12 speedy action would be required, we have made the assembly of the Conference as it were automatic. It must be a matter for diplomatic determination to settle its seat. If the League should be in the first place confined to the present Allies, a convenient seat might be Versailles. If the League should embrace a number of States, and some of those at present neutral, it might be better to place the seat in Holland or Switzerland, or possibly in Belgium; but it should be a fixed place, and in this connection we have been much impressed by Lieutenant-Colonel Sir Maurice Hankey's memorandum and address to us, in which he pointed out the great advantage arising from constant mutual intercourse between the representatives of nations, and we therefore propose that, subject to the power of substitution or addition, the ordinary diplomatic representatives at the capital which is the seat of the Conference should represent their respective States.

14. The next questions which enter into consideration in Articles 7, 10, 11, and 12 are whether the decisions of the Conference must be unanimous, and whether, if any resolutions may be passed by a majority, the voting strength of the States should differ. We have concluded to eliminate the States parties to the dispute, but the precedents in favour of unanimity are so invariable that we have not seen our way to give power to a majority, or even a preponderant majority, to issue a definite recommendation, though we are aware that many English writers express themselves in a contrary sense. On the other hand, we have felt that for all preliminary work the vote of a majority should be sufficient. We may add that we have been rather loath to frame a scheme under which our own country should be rendered liable to have a recommendation passed against it by a majority vote in a matter vitally affecting the national interests, and that we have also felt that if some of the enemy Powers are ever to come into this League they would equally be unwilling to submit themselves to such a liability. As to the question of the voting strength in cases where a majority is to determine, most English and American writers have contemplated giving a larger vote to the more important Powers, and there are precedents, such as the General Postal Union Treaty of 1878 and the Telegraphic Convention of 1897, for giving to those Powers which have important colonial possessions additional votes in respect of their colonies; but the experience obtained during The Hague Conference of 1907 shows that any such superiority would be greatly resented by some States, and we have shrunk from providing it.

15. Article 11, as it will be seen, is expressed in an alternative form. The first alternative is that which commended itself to the majority of the Committee.

16. Article 12 is a substitutional provision for that power of injunction which has been recommended by many English and American writers. It has been felt that if there is to be a moratorium, there may be cases of continuing or irreparable injury to which the injured State cannot be expected to submit. In order to meet this difficulty these writers have taken an idea from the legal procedure common to Great Britain and the United States. But in applying this procedure to international matters the following objections seem to arise:

(*a*) If final awards or recommendations are not to be the subject of enforcement by the League, it would seem illogical that interlocutory awards or recommendations should be so enforced;

(*b*) The aggressive State would certainly resent such an infringement of its sovereignty and struggle to prevent the use of an injunction, and the proceeding would almost necessarily be so prolonged, particularly if the injunction is to be the work of the whole Conference, that the interlocutory decision would hardly be reached sooner than the final one, and the mischief would have been done;

(*c*) It may be added that such knowledge as any of the members of the Committee have of such foreign jurisprudence as is founded on the Code Napoléon, leads them to doubt whether the procedure which most nearly approaches to the Anglo-American injunction has received the same development or occupies the same position of importance which it has with us.

17. The Committee have, therefore, rejected the idea of injunction, and submit this Article as a corrective for hardship which might otherwise be worked by the moratorium.

18. Article 15 requires some observation. The scheme of the British League of Nations Society makes the League a defensive alliance as against external Powers, and requires all the other Allied States to come to the assistance of any one of them "which may be attacked by an outside Power which refuses to submit the case to an appropriate tribunal or council"; but the American League to Enforce Peace has omitted this provision, and only one known American speaker or writer has taken the line of the British League. We have felt, therefore, that our draft treaty might provoke opposition if we inserted a clause obliging the Allies to mutual defence against external Powers, and we have substituted one which is facultative only.

19. Under Article 17 we might draw attention to the suggestion that when the League is once formed any future applicant for admission may have terms imposed upon him. This would enable the League to require reparation for past outrages, or to insist upon partial disarmament if the military

or naval forces of the applicant were disproportionate to those of the States already in the League.

(Signed)
WALTER G. F. PHILLIMORE (*Chairman*).
A. F. POLLARD.
JULIAN CORBETT.
J. HOLLAND ROSE.
EYRE A. CROWE.
W. TYRRELL.
C. J. B. HURST.
A. R. KENNEDY (*Secretary*).

March 20, 1918.

ANNEX

DRAFT CONVENTION

[There will be a Preamble reciting that the object of this Convention is to create a League of Nations which will, if possible, prevent all wars in the future.]

Avoidance of War

ARTICLE 1

EACH of the Allied States (being the parties to this Convention) agrees with the other Allied States collectively and separately that it will not go to war with another of the Allied States—

(*a*) without previously submitting the matter in dispute to arbitration or to a Conference of the Allied States; and

(*b*) until there has been an award or a report by the Conference, provided that in the case mentioned in Article 12 the observance of this sub-clause is suspended;

and also that it will not go to war—

(*c*) with another of the Allied States which complies with the award or with the recommendation (if any) made by the Conference in its report.

ARTICLE 2

If, which may God avert, one of the Allied States should break the covenant contained in the preceding Article, this State will become *ipso facto* at war with all the other Allied States, and the latter agree to take and to support each other in taking jointly and severally all such measures—military, naval, financial, and economic—as will best avail for restraining the breach of covenant. Such financial and economic measures shall include severance of all relations of trade and finance with the subjects of the covenant-breaking State, prohibition against the subjects of the Allied States entering into any relations with the subjects of the covenant-breaking State, and the prevention, so far as possible, of the subjects of the covenant-breaking State from having any commercial or financial intercourse with the subjects of any other State, whether party to this Convention or not.

For the purpose of this Article, the Allied States shall detain any ship or goods belonging to any of the subjects of the covenant-breaking State or coming from or destined for any person residing in the territory of such State, and shall take any other similar steps which shall be necessary for the same purpose.

Such of the Allied States (if any) as cannot make an effective contribution of military or naval force shall at the least take the other measures indicated in this Article.

Pacific Settlement of International Disputes

ARTICLE 3

If a dispute should hereafter arise between any of the Allied States as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the nature and extent of the reparation to be made for any such breach, if such dispute cannot be settled by negotiation, arbitration is recognized by the Allied States as the most effective and at the same time the most equitable means of settling the dispute.

ARTICLE 4

But if the Allied States concerned do not agree that the dispute is suitable for reference to arbitration, or do not agree as to the question to be referred or as to the composition of the tribunal of arbitration, or if for any other reason a reference to arbitration should prove impracticable, any one of the Allied States concerned may make application to the Conference of the Allied States to take the matter of the dispute into consideration.

ARTICLE 5

The seat of the Conference shall be at X, the convener shall be the Sovereign or President of the State of X, and his representative shall be president of the Conference. The Allied States shall be represented at the Conference by their diplomatic representatives accredited to the State of X. In the event of X being one of the States parties to the dispute, either State may communicate with the Sovereign or President of Y, who thereupon shall become the convener and shall fix the seat of the Conference and name its president.

The provisions of this Article shall not prejudice the right of any of the Allied States to send other representatives to the Conference, but the Conference shall be under no obligation to await their arrival.

ARTICLE 6

It shall be the duty of the convener of the Conference to give notice of the application to the Conference to every State party to the dispute and to summon the Conference as speedily as possible.

ARTICLE 7

The Conference shall regulate its own procedure, and may appoint Committees to enquire and report. In all matters covered by this Article the Conference may decide by the votes of a majority of the Allied States represented.

ARTICLE 8

The function of the Conference shall be to ascertain the facts with regard to the dispute, and to make a recommendation based on the merits of the case, and calculated to ensure a just

and lasting settlement. The recommendation shall not have the force of a decision.

Article 9

The Allied States agree to place at the disposal of the Conference, or of any Committee appointed by the Conference, to the fullest possible extent compatible with their interests, the information in their possession which bears upon the dispute.

Article 10

The recommendation of the Conference shall be addressed to the parties to the dispute, and will not require their assent.

Article 11

In the event of the Conference being unable to agree upon a recommendation to be addressed to the parties to the dispute, it shall be the duty of the representatives of such of the Allied States attending the Conference as shall be satisfied as to the nature of the recommendation which should be made—provided that they represent not less than a majority of the Allied States attending the Conference—to publish on behalf of the States which they represent a statement setting out what they believe to be the facts with regard to the dispute. They may also add thereto the text of the recommendation which they consider the Conference should have addressed to the parties to the dispute.

Alternative Article 11

If, in the event of the Conference being unable to agree upon a recommendation to be addressed to the parties to the dispute, any State or group of States having taken part in the Conference issues a public statement of the view which, as a result of the deliberations of the Conference, it takes of the dispute, such action shall not be regarded as an unfriendly act by either of the parties to the dispute.

Article 12

Any one of the Allied States having a dispute pending may apply to the Conference to be relieved from the moratorium

imposed by Article 1 (*b*), on the ground that there is a continuing injury, or on the ground that unless some prompt provision for reparation or restitution is made the injury will be irreparable. The Conference shall, without deciding in any way upon the merits of the dispute, forthwith consider this application, and may relieve the applicant State from the provisions of the moratorium, or may suggest terms of temporary arrangement as a condition of not relieving the applicant State from the moratorium, and may from time to time reconsider the application and the terms which should be imposed. In the event of relief from the provisions of the moratorium being granted under this Article, any of the Allied States may, notwithstanding the provisions of Article 1, come to the assistance of the State so relieved.

Relations between the Allied States and States not party to this Convention

ARTICLE 13

As regards disputes between one of the Allied States and a State not party to this Convention, the Allied State shall endeavour to obtain submission of the dispute to arbitration, if it be of a suitable nature for arbitration, and if the dispute be not of a nature suitable for arbitration, or if the other State will not agree to submit it to arbitration, the Allied State shall bring it before the Conference. In the latter event, the convener of the Conference shall, in the name of the League of Nations, invite the State not party to this Convention to become for this purpose a party to the Conference and to submit its case to the Conference, and in such case the provisions hereinbefore contained shall be applicable to the dispute both against and in favour of such State in all respects as if it were a party to this Convention.

ARTICLE 14

If the State not party to this Convention will not accept the invitation to become *ad hoc* a party to the Conference, the Conference may enquire into the dispute *ex parte*, and may

make a recommendation in the same way as if both parties were present.

ARTICLE 15

If the Allied State shall be attacked by the other State before an award or a report of the Conference is made, or notwithstanding the compliance of the Allied State with the award or the recommendation (if any) made by the Conference in its report, any of the Allied States may come to its assistance.

ARTICLE 16

In the case of a dispute between States none of whom are parties to this Convention, any of the Allied States may bring the matter before the Conference with a view to the Conference using its good offices to prevent war.

ARTICLE 17

Any State not party to this Convention may apply to the Conference for leave to become a party. The Conference will forthwith examine the application favourably, and will determine whether it should be granted and whether it is necessary to impose any terms.

Conflict of Treaties

ARTICLE 18

A. The Allied States severally agree that the present Convention abrogates all treaty obligations *inter se* inconsistent with the terms hereof, and that they will not enter into any engagements inconsistent with the terms hereof.

B. Where any of the Allied States, before becoming party to this Convention, shall have entered into any treaty imposing upon it obligations inconsistent with the terms of this Convention, it shall be the duty of such State to take immediate steps to procure its release from such obligations.

Confidential

THE COMMITTEE ON THE LEAGUE OF NATIONS

The Right Hon. Lord Phillimore, P.C. (*Chairman*).
Professor A. F. Pollard, Litt.D.
Sir Julian S. Corbett.
Dr. J. Holland Rose, Litt.D.
Sir Eyre Crowe, K.C.B., K.C.M.G.
Sir William Tyrrell, K.C.M.G.
Mr. C. J. B. Hurst, K.C., C.B.
Mr. A. R. Kennedy (*Secretary*).

FINAL REPORT

To the Right Hon. A. J. Balfour, P.C., O.M., &c., &c.
Secretary of State for Foreign Affairs.

July 3, 1918.

I.—*Introductory*

1. In our Interim Report already presented, we submitted, as the outcome of our juridical enquiry into the various schemes which have been suggested for establishing a League of Nations, a draft convention which should serve for initiating an interchange of views, if it be deemed desirable to approach one or more of our Allies in this sense at the present juncture.

2. Our instructions further directed us to enquire, from an historical point of view, into the various schemes for a League of Nations, as well as other devices which have been proposed or attempted for the avoidance of war, and we have now to complete our report by submitting the results of our further enquiry.

3. In conducting our historical investigation we have attempted to ascertain what were the prevailing political ideas and international situations which gave rise to these earlier

schemes with the object of ascertaining why it was they all proved abortive, and how far the conditions under which they failed continue to exist at the present time.

II.—*Early Projects for a League of Nations*

4. The various projects which were put forward during the 17th and 18th centuries are all to be traced to the sense of international anarchy which followed the breakdown of the organization associated in men's minds with the papacy and the Holy Roman Empire. The Reformation and the contemporaneous emergence of the sovereign national State put an end to the dream of recurring to this system, and Erasmus was its last serious advocate.

5. In the political thought of the time, the anarchy which had begun to characterize modern as distinct from mediæval history was not admitted by political theorists as anything more than a state of transition pending the erection of a more stable system of international relations. The outcome was two lines of thought. The rise of the sovereign State led naturally to an effort to create a body of international law to govern inter-State relations. But this was not enough. International anarchy was not checked, and the protest against it became more vocal with each successive epidemic of war. The Thirty Years' War, the wars of Louis XIV., and those of the Revolutionary and Napoleonic period were all accompanied or followed by more or less academic projects for establishing perpetual peace, all of which, in a greater or less degree, looked back to the mediæval system. In spite of the wholly changed condition which the development of the national State had set up, they were planned on the old foundations and were dismissed by practical statesmen as dreams that ignored the fundamental factors of the problem.

6. All these schemes were, in fact, the work of political philosophers. Even the "Grand Design" of Sully's memoirs cannot be regarded as an exception. Though the memoirs sought to attribute it to Queen Elizabeth and Henry IV., it is known that the negotiations the memoirs profess to describe never took place. Recent research has shown the whole story to be apocryphal. It is even doubtful whether the detailed exposition of the "Design" was the work of Sully at all, and

not that of the Abbé, who edited the later volumes of the memoirs. They were not issued until twenty years after the fallen minister's death, and bear internal evidence of having been composed after the outbreak of the Thirty Years' War. Even if the germ of the "Design", which appeared in the earlier volumes, can be attributed to Sully, it was the work of his disappointed old age, and can be placed no higher than the plan for perpetual peace which Napoleon expounded to Las Cases at St. Helena as having been the key of his whole policy.

7. The latest of the series of schemes which Sully's memoirs inaugurated was the plan for a "confederation" of Europe by means of a congress which the Abbé de St. Pierre brought forward during the negotiation of the Peace of Utrecht in 1713. Political philosophers were inclined to regard it with approval; and the congresses of Brunswick (1712–1722), Cambrai (1724), and Soissons (1729), illustrate the hold which the idea obtained upon the minds of practical men. But they also illustrate the difficulty of giving practical application to the Abbé's proposal that all differences between the contracting parties should be "settled by arbitration or judicial decision". Statesmen were obsessed by the idea of a balance of power as the only means for mitigating or preventing war; and their attitude towards the Abbé's scheme is sufficiently marked by Cardinal Fleury's comment: "You have forgotten, Sir, the preliminary condition. You must begin by sending a troop of missionaries to prepare the hearts and minds of the contracting sovereigns".

8. The cardinal's criticism touched a fundamental weakness in these early projects. Since the European system had become a collection of sovereign national States, the problem was to find a bond of union which would restore the conception of a European family, while preserving the individuality of the State. The Abbé's plan was really to expand the constitution of the Holy Roman Empire so as to include the whole of Europe, with the Emperor's place taken by a rota of sovereigns; and Leibnitz' main criticisms of the scheme were that it deposed the Emperor, and, unlike the Empire, provided no appeal from subjects against their sovereigns. The possibility of a conflict of interests between princes and peoples was obscured, but not removed, by the Abbé's curious phrase about a European "republic" consisting of sovereigns. Few monarchs had yet

divested their minds of the feudal conception that the State was the private property of the prince. A confederation could therefore only take the form of a confederation of princes, not of peoples, and the Abbé even recommended his scheme on the ground that it would strengthen the power of princes, inasmuch as it would guarantee them not only against foreign invasion, but also against rebellions of their subjects.

9. It is not possible, however, to prove that democracy, had it existed and exercised sovereign rights in the first half of the eighteenth century, would have been less tenacious of them than were princes; and we must rest content with the historical fact that the proprietary notion of the State did give the sovereign a personal interest in the extension of his sovereignty which acted as a deterrent to all schemes for preventing it. Nor can it be doubted that acquisitiveness exerts a greater influence upon the individual than upon the community; and the examples of the United Netherlands, Switzerland, and Poland create the presumption that less autocratic forms of government were, either from principle or from weakness, more pacific than monarchies like those of Louis XIV., Peter the Great, Charles XII., Frederick the Great, Joseph II., and Catherine the Great.

III.—*Projects from the Peace of Utrecht to the French Revolution*

10. The ideas of this period showed little development until the democratic movement of thought began to infuse new blood. Till then men continued to harp on the analogy of the Swiss Confederation and the United Provinces, though in 1760 the Abbé de Mably put his finger on its weak point. "Neighbouring nations", he said, "are naturally hostile, unless their common weakness forces them to league in a confederative republic". In both those instances confederation was the outcome, not of any idea of instituting a reign of peace, but of a sense of common danger so strong as to overcome particularist sentiment. Against this objection, however, Rousseau urged what he hoped from democracy. If peoples were free, he contended, they would not go to war.

11. This line of thought may be taken as culminating in the project for perpetual peace with which Kant attempted

to round off his *System of Politics*. It is marked by two advances. The one is that under the influence of Bentham it had come to be recognized that for any such plan to succeed, the proprietary theory of the State must give way to one based on the interest of the people. The other was due to the successful formation of the United States of America. For although that also was a confederative republic to meet a common danger, it was on so large a scale that it seemed to bring the idea of something approaching a federal union of Europe within the range of practical politics.

12. Bentham himself never advocated any such scheme. His mind was working rather on the lines which led eventually to The Hague Tribunal, and in his *Principles of Morals and Legislation*, 1789, he went no further than to put forward a plan for the institution of an International Court of Judicature without coercive powers. It was left to Kant to apply his theory of "the general interest" to the older conceptions of a league of nations. This Kant did by postulating a constitutional, or, as he termed it, a republican conception of the State as the essential condition of the success of the scheme he was proposing. But probably no one better than himself knew how hopeless was the attainment of that condition at the time, at least in Central Europe. For Kant, then, his plan may have been intended as a Benthamite pamphlet, but, little as Kant seems to have believed in it, Bentham's ideas had fertilized the ground too widely for it not to take some root, and, under the stimulus of the Napoleonic wars, a strong growth sprang up which aimed at something far more comprehensive than Bentham himself regarded as practicable.

IV.—*Period of the French Revolution*

13. In its initial phases the French revolution seemed destined to justify the thesis—shortly afterwards expounded in Kant's *Essay on Perpetual Peace*—that a free people would not be likely to make war, but would rather form a nucleus for an expanding federation of free peoples bound by a covenant of peace (*foedus pacificum*) as distinguished from an ordinary treaty of peace (*pactum pacis*). At the outset the revolution was distinctly pacifist. The early revolutionaries also anticipated Kant's thesis by endeavouring to apply to alien peoples

the principle of pacific union which had been so successfully applied to peoples of kindred race and institutions in America.

14. It soon became apparent, however, that, whether or not Kant's anticipation would hold good for a system of established democracies, it would not apply to a people in revolution who had still to establish their liberties in the face of the scarcely concealed hostility and suspicion of neighbouring monarchies. For the old rivalry of princes as a cause of war was substituted the rivalry of two political ideas. Apprehension on the one side and revolutionary intoxication on the other engendered for a time strife between nations as bitter as anything the old order had seen. Still, the belief in the natural pacifism of democracies, or at least the belief in the virtue and practicability of a new international system based on an accord between free peoples, was not lost. The outcome of the new series of wars was the fresh line of effort to secure perpetual peace which is associated with the Emperor Alexander.

V —*The Period of the Congresses*

15. In 1804 Alexander made overtures for an alliance to the British Government, and, while disclaiming any attempt to realize "the dream of perpetual peace", he advocated the formation of a league in which governments were to be "founded on the sacred rights of humanity", the "prescriptions of the rights of nations" were to be established on "precise principles", and no war was to be begun "until all the resources which the mediation of a third party could offer have been exhausted". His envoy, Novosiltzof, said to Pitt that his master's aims might be "reduced to a single one only —that of restoring the equilibrium of Europe and establishing its safety and tranquillity on more solid bases". Pitt gave a guarded assent, and, in the Anglo-Russian Alliance of the 11th April 1805, a secret article was included providing for "the establishment in Europe of a federative system to ensure the independence of the weaker States by erecting a formidable barrier against the ambitions of the more powerful."

16. Alexander's nebulous projects had little influence upon the practical agreements by means of which the four Great Powers—Great Britain, Russia, Prussia, and Austria—effected Napoleon's overthrow; but in September 1815 he induced his

Prussian and Austrian allies to sign with him a still vaguer document, the "Act of the Holy Alliance". It was little more than a confession of legitimist faith; its signatories avowed their belief that the principles of the Christian religion were binding upon States not less than upon individuals, and mutually pledged themselves to regulate thereby their domestic and their foreign policy; they described themselves as vicars of God, to whom all sovereignty belonged, and their peoples as but branches of a single Christian nation; they promised one another "aid and assistance on all occasions and in all places", and undertook to admit to their fraternity all Christian sovereigns who made the same profession of faith. The Pope and the Sultan were not invited to sign, and Great Britain politely refused. But most Christian princes gave in their adhesion. The Act, however, contained no executive clauses and created no organization; and the universal union held no congresses, passed no further resolutions, and left the practical work of guaranteeing European peace to the narrower, but more specific and effective, combination of the four Great Powers in the Quadruple Alliance.

17. This other association had been founded by the Treaty of Chaumont (10th March 1814), which was renewed with some modifications at Paris (30th May 1814), Vienna (25th March 1815), and again at Paris on the 20th November 1815. Castlereagh called the original "my treaty", and it aimed simply at "the re-establishment of a just equilibrium" and at "maintaining against all attacks the order of things that shall be the happy outcome of our efforts". By "equilibrium", it may be remarked, Castlereagh meant not a simple balance of power between France and her enemies or between any two systems of alliance, but "a just repartition of force amongst the States of Europe". These efforts produced the Final Act of the Congress of Vienna (9th June 1815) and a series of amending treaties concluded in the autumn after Napoleon's return from Elba and final defeat at Waterloo. During this period Alexander made various attempts to expand the Quadruple Alliance into a universal union and the terms of Castlereagh's treaty into an unlimited obligation, and the proclamation of the Holy Alliance was an effort on his part to stampede Great Britain into the common fold. But the only practical step he achieved was the incorporation in the final treaty of

the 20th November 1815 of an article providing for the periodic meeting of the four allies in Congress.

18. At the first of these congresses, held at Aix-la-Chapelle in 1818, Alexander renewed his endeavours to graft upon the Quadruple Alliance the principles and universality of the Holy Alliance. Castlereagh objected that a limited alliance for certain defined purposes was one thing; a universal union committed to common action in circumstances that could not be foreseen was another. "Till", he wrote to Lord Liverpool on the 19th October 1818, "a system of administering Europe by a general alliance of all its States can be reduced to some practical form, all notions of a general and unqualified guarantee must be abandoned, and the States must be left to rely for their security upon the justice and wisdom of their respective systems and the aid of other States according to the Law of Nations". He was, however, convinced by experience of the utility of periodic congresses. "It really appears to me", he wrote to Liverpool, "to be a new discovery in the European Government [*sic*], at once extinguishing the cobwebs with which diplomacy obscures the horizon, bringing the whole bearing of the system into its true light, and giving to the counsels of the Great Powers the efficiency and almost the simplicity of a single State". He was, therefore, glad to concur in the admission of France to the circle, thus converting the Quadruple into the Quintuple Alliance.

19. The success of this Alliance in maintaining peace, in spite of its insecure foundation upon a legitimist and anti-national basis, was considerable. The "single State", however, soon broke down owing to the divergent views of its constituent governments. It could only succeed so long as it was animated by a common will, representing a compromise between the reactionary views of Metternich and the comparative liberalism of Castlereagh. Alexander held the balance; but it was upset when a series of liberal or revolutionary manifestations in Germany and elsewhere, followed by a mutiny of Alexander's own guards in October 1820, alienated his mind from liberalism and threw him into the arms of Metternich. Castlereagh foresaw that the Alliance would "move away from us without our having quitted it". France was reluctant to see order re-established in Italy by Austrian arms; Great Britain was reluctant to see it restored in Spain (and still more in the Spanish

colonies) by French arms. A schism commenced at the congress of Troppau in 1820. Russia, Austria, and Prussia resolved to bring back "into the bosom of the great Alliance", if need be by force of arms, any State which broke away from its constituted authorities. The breach thus created was widened at Verona in 1822. Great Britain and the United States drew together in 1823 over the Monroe Doctrine, which denied the legitimist claim, and France was finally withdrawn by the revolution of 1830. The Quintuple Alliance was thus reduced to the three original signatories of the Holy Alliance, Russia, Austria, and Prussia, a circumstance which tended to perpetuate the confusion between the two. In this form, as a triple alliance of the three autocracies, it continued to combat progress until the revolutions of 1848, and even survived in the intervention of Russia at Austria's invitation in 1849 to suppress the nationalist rising in Hungary. The common impulse of those revolutions in 1848, coupled with the commercial and industrial internationalism of the free trade movement which was illustrated by the international exhibition of 1852, provided a more democratic, or at least more popular, basis for future attempts to prevent international conflicts.

20. The success and the failure of this "Confederation of Europe" during the period of the congresses may be explained either by its methods or its objects. So far as its methods are concerned, it is clear that the plan of a simple declaration, embodied in the Holy Alliance, effected nothing. The universal union was unsubstantial until it had lost its character by being transformed into the remnants of the treaty-bound Quintuple Alliance, and the simple declaration remained nothing more until its vague professions had been reduced to Metternich's concrete and reactionary programme. The effective and useful work of the "Confederation" was done through the congresses of the Great Powers who signed the specific engagements contained in the second Treaty of Paris, but it is to be noted that many of the important disputes which they settled were not within the declared scope of those engagements. With regard to its objects, the "Confederation" was formed to guarantee peace, was then perverted into an engine for repressing reform, and thus became an effective provocation to revolution. So far as any moral applicable to existing circumstances can be deduced from an experiment conditioned by those of a

century ago, it would seem to be that any attempt to reconstruct a similar system must be limited to a policy upon which there is a substantial measure of agreement among the Powers, and must possess sufficient elasticity to provide for future developments in the public opinion of the world.

VI.—*The Concert of Europe*

21. The period which followed the breakdown of the congress system was marked by frequent wars. It was also a period when nationalism with a democratic impulse, which had been the main cause of the dissolution of the Quintuple Alliance, showed increasing activity. But, apart from the wars of liberation in Greece, Italy, and the Balkans, nationalism cannot be held responsible for the unrest. European warfare was mainly the creation of autocratic militarist governments, and even the wars of liberation might be considered as the outcome of the vicious and unstable system which those Governments had insisted on setting up. It can hardly be questioned that popular representative Governments have on the whole been more alive than autocracies to the impression that aggressive war, even if successful, may prove to be a greater evil than any reasonable compromise that would have averted it.

22. It was mainly to arrange such compromises that the Concert of Europe came to take its place in the international system. Its successes and its failures are of such recent memory that a detailed examination of them has seemed unnecessary. But as a new device for preventing war which was independent of any treaty and trusted entirely to fostering a spirit of co-operation to preserve peace or to localize wars, it is to be noted that it borrowed from the Quintuple Alliance the feature which Castlereagh regarded as its most valuable invention—that is, it sought by conferences to give " to the counsels of the Great Powers the efficiency and almost the simplicity of a single State ".

23. In this, like the congresses, it failed. Though the spread of democratic nationalism seemed to many to have paved the way to success, there were still obstacles—legacies of 1815 and others—which it could not overcome, and one at least was insuperable. In Germany the people were persuaded

that the national State depended for its security upon a military monarchy, and, so long as this creed was held in the most powerful military State in Europe, successful co-operation was as impossible as it became after Alexander I.'s relapse into absolutism.

VII.—*Conclusion*

24. Having reviewed the historical causes which have in the past condemned to sterility all efforts directed to the establishment of international relations on a basis which precludes a resort to war, it remains for us to consider whether, and if so, to what extent, those causes have ceased to be operative as a result of the emergence of new factors, setting free fresh and strong currents moving in the opposite direction. We believe that some such currents are in fact to be detected.

25. The experience of the present war has brought all thinking people to see that the intricate development of commercial and financial relations between all the States of the world has given to all nations a common life, and that war between any two great Powers produces reactions more widespread and violent than anything realized before the present conflict. No war has hitherto involved so many countries at once; inflicted so many casualties upon combatants or losses on civilians; caused such devastation of land and destruction of property; imposed such comprehensive hardship on the world at large. Such limitations of space, time, and destructive energies as once restricted the evils of war have been swept away; and the magnitude of our present calamity may be expected to provoke a corresponding effort to avert its repetition and aggravation, all the more as this war has shown that there is no real palliative short of prevention. Schemes to civilize warfare, to mitigate its cruelty, to restrict its effect, have failed to achieve their purpose, even where they were not deliberately set aside, and the unbounded possibilities of modern science have been enlisted frankly on the side of force and might, uninfluenced by any consideration of the moral law. The position of neutrals has been only less unhappy than that of belligerents; never before has it been so difficult for them to maintain their neutrality or to eke out a bare subsistence amid the universal shortage which war has created. Nor is there

the old and somewhat cold comfort that war only affects a group of nations, a single continent, or one hemisphere. Even the Old and the New World have become one, and the United States of America have been constrained to intervene in a European quarrel for the sake of the peace of mankind.

26. These conditions have brought home the actual realities and horrors of war to men and women outnumbering many times those personally affected by military or naval campaigns of former years. This element in the new situation might not perhaps alone suffice to justify an expectation that even so widespread a feeling of revulsion from all forms of war and so passionate a popular longing for the organization of a perpetual peace, as now witnessed, would necessarily be translated into action. These ideal aspirations of our days might go the way of the unsubstantial efforts of past generations and evaporate into thin air. But it is here that a second new factor merits attention. A line of thought and feeling is tending in all countries to assign a paramount place, not merely in political speculation, but in the actual organization of government, to the constitutional principle. In the great majority of nations, the personal conception of the State has by now been definitely superseded. In Russia it has, for the time at least, been entirely displaced; and even in those last strongholds of despotic and class-government, Germany, Austria-Hungary, and Bulgaria, it is seemingly losing ground. At a moment when the forms and spirit of popular government are acquiring a noticeable accretion of strength in every direction, and when the vast majority of those who have to fight are not only voters but civilians by profession and inclination, it is becoming an article of faith widely and sincerely professed in most countries that there is no quarrel between nations for which an equitable settlement could not be found without recourse to war, provided the voice of the people could make itself heard and the necessary machinery were called into existence.

27. It is unnecessary for us to enter further into a discussion of the much-debated question whether democratic forms of government do or do not tend to extinguish the human impulses which have hitherto made for war. Certain it is that where a genuine belief that war is unnecessary in any circumstances is widely prevalent in a community disciplined to self-government, this will have its influence on the national executive;

and as the circle of such communities extends, it becomes possible, without presumption, to look forward to a system of international relations maintained by an aggregate of popular forces uniformly intolerant of any attempt to substitute an appeal to the sword for the methods of the Council Chamber. The combination, therefore, of strong popular feeling and a general adoption of a form of government in which the will of the people makes itself felt would seem to justify the hope that the history of the future may differ from the history of the past in having to record the birth and development of a method of co-operation between sovereign States, whereby their ancient rivalries will be shorn of their extreme violence and made amenable to peaceful adjustment.

28. Consciousness of a community of aims, finding expression through broadening channels of public opinion, has inspired in recent years a multitude of theories and schemes revealing, amidst much variety and divergence of detail, a remarkable uniformity of general structure. We append to our present report a concise analysis of the more noticeable of these schemes, for which we are indebted to our chairman, and which has assisted us materially in considering and finally adopting the essential features of our own draft scheme already submitted in our Interim Report.

29. This scheme is, in our opinion, constituted on the only lines on which, in the present state of thought, any project for a League of Nations promises success; and, bearing in mind the lessons of history, we venture to urge its initiation while the Allies are united by the common peril of the war, and before such disintegrating influences as might arise with the relaxation of the present strain render more difficult the task of obtaining agreement.

PHILLIMORE (*Chairman*).
A. F. POLLARD.
JULIAN CORBETT.
J. HOLLAND ROSE.
EYRE A. CROWE.
W. TYRRELL.
C. J. B. HURST.
A. R. KENNEDY (*Secretary*).

APPENDIX

RECENT SCHEMES OF FEDERATION

By the Rt. Hon. Lord Phillimore

I. SUMMARY OF VIEWS

SINCE the War began, there have been a number of publications by individuals and by associations submitting schemes for the prevention of future war. Some writers lay stress upon recourse to Arbitration, others upon a European or World Federation or League. The various proposals will be given with more fullness later on; but the following is a convenient summary:

All agree in dividing disputes between nations into disputes which are justiciable and those which are not, and suggest that the former should go before some form of Tribunal, whether called a Court or a Body of Arbitrators, and whether established in permanence or appointed *ad hoc*. The general idea is that it should be a permanent body.

All agree in referring all other disputes to some body which will not proceed upon legal principles which are *ex hypothesi* inapplicable, but will act—as it is sometimes expressed—as a Council of Conciliation. Some would give to this Council quasi-legislative powers, that is to say, powers to add to the existing rules of International Law. Some would give the Council a power to supersede, or to take the place of, the Court by amending or repealing the existing rules of International Law or the existing terms of Treaties, and, having thus established new law, either remitting the case to the Court or dealing with it as a Court. The source of this last idea is the Alabama Convention, by which Great Britain and the United States, before submitting their disputes to the Arbitration Tribunal at Geneva, agreed that certain principles should be applied, as if they were International Law, by the Tribunal.

All these writers agree that it should be incumbent upon every State party to the League to submit, or to consent to the submission of, any dispute either to the Court or to the Council;

and that there should be a *moratorium* (to use a convenient application of a word hitherto employed in commerce), that is to say, that no State should have recourse to war pending the decision of the Court or Council, as the case may be.

As to the constitution of the Court and of the Council, there are varieties in detail. All the writers would admit that, to some extent, every State party to the League should have some voice in the appointment of the Court and of the Council; but they differ widely as to the extent, and as to the weight to be given to the smaller States.

Most of them would create an artificial body of eight Great Powers—the old six European Great Powers, with the United States and Japan added, but China excluded, and would eliminate from the League, and therefore from voice in the Court or Council, what they call backward or half-civilized States. Some hesitate about the admission of any of the South American States,[1] forgetting that, if their schemes are to be of any use, they must at least contemplate what is likely to happen during the next fifty years, and that during that period the A. B. C. States[2] are likely to become some of the most important in the world. Most of them would divide States in the League into two classes only—(*a*) the Great Powers, (*b*) all the rest, putting the eight Great Powers on an equal footing *inter se*, and all the others, however much they differ in importance, also on an equal footing *inter se*.

As to the enforcement of the duty to go to the Court or Council, and to refrain from war in the interval, most of those who have written since the War began accept the necessity of constraint by force. Many of them do it with reluctance, and most of them suggest that the primary and most suitable use of force would be by some form of international boycott, in lieu of an actual recourse to arms. Many writers have persuaded themselves that if the international boycott be used it would be sufficient, and that it would not in its turn provoke war.

On the question of enforcing the Order or Award of the Court or Council, there is more difference of opinion. Few go the length of saying that it would be the duty of the several States parties to the League to compel the State against which

[1] *E.g.* Hobson, p. 158; Woolf, *International Government*, p. 58; *Framework of a Lasting Peace*, p. 55.

[2] Argentina, Brazil, and Chili.

an Order of the Court has been made to comply with that Order. None go the length of saying that it would be a duty of the States to enforce obedience to the recommendation or award of the Council. Where obedience is to be enforced, some would make it the duty of every State to contribute to the enforcement; some would leave it to the Great Powers alone; some suggest that if a State, not content with non-performance of the Order or Award, takes up arms in contradiction of it, it should be resisted by all the States. Some would leave the injured State to enforce its right, or protect itself against invasion, assisted only to this extent, that the wrong-doer will be driven to fight without allies, because all Treaties of Alliance are to be deemed in such an event to be dissolved. Some, again, have been content with a general outline, and have not worked out in detail the machinery by which force, whether economic or military, is to be decided upon and applied. Some would create for these purposes an Executive of the League, and suggest that there should be a scale of contributions in men and money, such as there was among the States of the old Holy Roman Empire and, it is believed, among those which formed the German Confederation of 1815.

The next question that arises concerns the relation of the League to States outside the League, and the duty of States inside the League to assist one of their number if attacked from outside. Opinions vary as to this, and as to the possibility of having anything like a large League to start with, some being so modest in their aspirations that they anticipate that the League, in its initiation, will consist of the "Entente" Powers with a few neutrals added. Others deprecate anything like a League which would exclude Germany and her Allies—an exclusion which would result in the formation of a second League, more or less hostile to the first.

Most of the writers to whom reference will be made published their books before the United States joined in the War; and many of them, when advocating something which they think likely to be disagreeable to their own countrymen, threaten them with the United States as a naughty boy is threatened with recourse to his big brother. They are now out of date.

Some see a great instrument of peace in absolute, unconditional Free Trade; others are violent Protectionists in the sense

that they would artificially regulate trade for the benefit of particular national industries. But they seek to reconcile their scheme with international harmony by setting up somei nternational or supernational body that would play the part of Providence to the several States, and, while protecting the national industries, would compel the various nations to facilitate the supply of raw materials and advantages of transit to all others in need of them.

Some think that the panacea is to be found in what they call Democratic Control, by which they mean not merely that a people should elect its Parliament—Parliament choosing the Ministers and leaving it to them to settle such matters—nor even that they would have confidence in Parliament, but that every diplomatic question should be decided in the face of day, after general public discussion. It is as if, in matters of business, when two bodies of men were treating with each other, neither were to be allowed to discuss between themselves in private what line of action they should take with regard to the other.

Another school is so anxious for regulation of all kinds that it would press forward from regulation by the State of most of the actions of individual citizens to regulation by a super-State of the actions of individual States. This school would have, not merely a supernational Executive to determine how the forces of the League should be used to prevent war, but a Legislature which would regulate all relations of States *inter se*, and of citizens of one State with another State or the citizens thereof, in peace as well as in war, as to the course of trade, the rules of occupation and development of unsettled countries, grants and concessions, trusts, cartels, changes of nationality and domicile, and so forth, with a supernational Executive to enforce the enactments of this supernational Legislature.

2. Particular Organizations

The organizations which have thus far taken this matter in hand appear to be those of:

(*a*) Viscount Bryce and his friends.
(*b*) The British League of Nations Society.
(*c*) The (American) League to Enforce Peace.
(*d*) The Fabian Society.
(*e*) The Union of Democratic Control.

(*f*) L'Organisation Centrale pour une Paix Durable (The Hague).[1]

(*a*) *Lord Bryce's "Proposals for the Prevention of Future Wars"*.—These have been revised to April 1917. Under this scheme, summarily described, the six Great Powers of Europe, the United States and Japan, and all other *European* Powers which may be willing, shall enter into a "Treaty Arrangement". China, and the other American and Asiatic Powers may apparently be admitted later (Art. 1). Disputes are divided into those which are of a justiciable character and those which are not (Arts. 2, 4).

"Disputes of a justiciable character" are to be defined as

> Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the nature and extent of the reparation to be made for any such breach.

Justiciable disputes are to be referred to "the Court of Arbitral Justice", or to the Court of Arbitration at The Hague; and the Powers are to agree "to accept and to give effect to the Award of the Tribunal" (Art. 3). For other matters, and for the question whether a dispute is of a justiciable character or not, reference is to be made to the Permanent Council of Conciliation. On this Council all the signatory Powers are to have representatives; each of the Great Powers so-called—that is, the eight mentioned—is to have, it is suggested, three members, the other Powers at least one (Introd., p. 21). Apparently the whole Council is to sit, though it is to have power to appoint Committees to report. No executive power is conferred on the Council; but it is to have power, of its own initiative, to consider disputes and invite the Parties to submit them with a view to conciliation (Art. 10), and even to make suggestions before disputes arise (Art. 12).

Moratorium for Hostilities

ART. 17. Every signatory Power to agree not to declare war or begin hostilities or hostile preparations against any other signatory

[1] The outlines of the schemes of these organizations have been filled up in several cases by members writing on their own behalf, who sometimes carry the proposals of their particular body a good deal farther.

Power before the matter in dispute has been submitted to an arbitral tribunal, or to the Council, or within a period of twelve months after such submission; or, if the award of the arbitral tribunal or the report of the Council, as the case may be, has been published within that time, then not to declare war or begin hostilities or hostile preparations within a period of six months after the publication of such award or report.

Limitation of Effect of Alliances

ART. 18. The signatory Powers to agree that no signatory Power commencing hostilities against another, without first complying with the provisions of the preceding clauses, shall be entitled, by virtue of any now existing or future treaty of alliance or other engagement, to the military or other material support of any other signatory Power in such hostilities.

Enforcement of the Preceding Provisions

ART. 19. Every signatory Power to undertake that, in case any Power, whether or not a signatory Power, declares war or begins hostilities or hostile preparations against a signatory Power, without first having submitted its case to an arbitral tribunal or to the Council of Conciliation, or before the expiration of the prescribed period of delay, it will forthwith in conjunction with the other signatory Powers take such concerted measures, economic and forcible, against the Power so acting as in their judgment are most effective and appropriate to the circumstances of the case.

ART. 20. The signatory Powers to undertake that, if any Power shall fail to accept and give effect to the recommendations contained in any report of the Council or in the Award of the Arbitral Tribunal, they will at a Conference to be forthwith summoned for the purpose consider, in concert, the situation which has arisen by reason of such failure, and what collective action, if any, it is practicable to take in order to make such recommendations operative.

(*b*) *The British "League of Nations Society"*.—This Society published its *Project of a League of Nations* in August 1917. The programme is short, and is as follows:

1. That a Treaty shall be made as soon as possible whereby as many States as are willing shall form a League binding themselves to use peaceful methods for dealing with all disputes arising among them.
2. That such methods shall be as follows:—
   (*a*) All disputes arising out of questions of International Law, or the interpretation of Treaties, shall be referred to The Hague Court of Arbitration, or some other judicial

tribunal, whose decisions shall be final and shall be carried into effect by the parties concerned.

(*b*) All other disputes shall be referred to and investigated and reported upon by a Council of Inquiry and Conciliation; the Council to be representative of the States which form the League.

3. That the States which are members of the League shall unite in any action necessary for ensuring that every member shall abide by the terms of the Treaty; and in particular shall jointly use forthwith both their economic and military forces against any one of their number that goes to war, or commits acts of hostility against another, before any question arising shall be submitted as provided in the foregoing Articles.

4. That the States which are members of the League shall make provision for mutual defence, diplomatic, economic, or military, in the event of any of them being attacked by a State not a member of the League which refuses to submit the case to an appropriate Tribunal or Council.

5. That conferences between the members of the League shall be held from time to time to consider international matters of general character, and to formulate and codify International Law, which, unless some member shall signify its dissent within a stated period, shall hereafter govern in the decisions of the Judicial Tribunal mentioned in Article 2 (*a*).

6. That any civilised State desiring to join the League shall be admitted to membership.

It will be seen that this scheme accepts the same division of disputes as that adopted by Lord Bryce. It contemplates forcible action by the States which are members of the League. They are to use economic or military force against any one of their number that goes to war before submitting the question either to arbitration or for conciliation. It binds the parties, when the case is referred to arbitration, to carry out the award. But it makes no provision for force being brought to bear upon the party unwilling to obey the award or to accept the Report of a Council of Conciliation. Force is only to be used to secure the *moratorium* while the dispute is under consideration. It will be further seen that the scheme is so far from contemplating a world-wide League that it provides in Art. 4 for mutual defence by members of the League against outside Powers in certain events.

(*c*) *The American "League to Enforce Peace".* — The

proposals of this League are set out in an article by the chairman, Dr. Marburg, in a publication of the Society. The four articles of its platform are as follows:

1. All justiciable questions arising between the signatory Powers, not settled by negotiation, shall, subject to the limitations of treaties, be submitted to a judicial tribunal for hearing and judgment, both upon the merits and upon any issue as to its jurisdiction of the question.

2. All other questions arising between the signatories and not settled by negotiation shall be submitted to a Council of Conciliation for hearing, consideration, and recommendation.

3. The signatory Powers shall jointly use forthwith both their economic and military forces against any one of their number that goes to war, or commits acts of hostility, against another of the signatories before any question arising shall be submitted as provided in the foregoing.

4. Conferences between the signatory Powers shall be held from time to time to formulate and codify rules of international law, which, unless some signatory shall signify its dissent within a stated period, shall thereafter govern in the decisions of the Judicial Tribunal mentioned in Article 1.[1]

It will be seen that this platform is less drastic than that of the British League, because it omits the contractual duty to carry into effect the decision of an Arbitral Tribunal, and also contains no clause corresponding to Clause 4 of the British platform, which makes the League into an alliance against any State, not a member of the League, that attacks a member.[2]

The American League has published a collection of speeches made at a meeting held by it in Philadelphia, June 17, 1915, and, under the title "Enforced Peace", the proceedings of the first Annual National Assemblage at Washington, May 26-27, 1916. Dr. Lowell, President of Harvard University, who was a speaker at both meetings, published a separate pamphlet in September 1915. The purport of these publications is to show the need of an organization to enforce peace, and to induce the authors' countrymen to take an active part in promoting it. They are very eloquent, but they do not go into detail, and

[1] *The Project of a League of Nations*, p. 18.

[2] One speaker, however (Dr. Clark), at their first meeting, took the line of the British League.

they contribute little towards the development of the general idea or to meet criticisms.[1]

Dr. Lowell's pamphlet, however, has useful observations upon the impracticability of an international police, upon the probable feebleness of a Conference of Powers called upon to restrain a recalcitrant State, and upon the difficulties of an economic boycott. One point is insisted on which has more novelty, namely, that, as balancing the *moratorium* which prevents a State from having recourse to arms pending the reference to Court or Council, that State should be able to get an injunction from Court or Council restraining its opponent from continuing its aggression *pendente lite*. This suggestion is also made by Mr. Lowes Dickinson.[2] How far it would be understood and accepted by nations whose systems of jurisprudence are not Anglo-American may be a question.[3]

(*d*) *The Fabian Society*.—A work of some importance entitled *International Government* has been published by this Society. It contains two reports (Parts I. and II.) by Mr. L. S. Woolf, and a project (Part III.) by a Fabian committee "for a Supernational Authority that will Prevent War".[4] Part I. is well worthy of consideration.

Mr. Woolf attempts to classify the causes of war, and he analyses them under four heads:

1. Disputes arising from legal or quasi-legal relationship, *e.g.* (*a*) as to interpretation of treaties; (*b*) as to contractual rights and duties; (*c*) as to definitions of boundaries; (*d*) as to delicts.

2. Disputes arising from economic relationship, trade, and finance.

3. Disputes arising from administrative or political relationship, *e.g.* as to questions of territory, subject races, expansion, nationality, supremacy, and predominant influence.

[1] The papers which go into most detail are *The League Program*, by Thomas Raeburn White; *Preparedness and Ultimate Reduction of Armaments*, by Hamilton Holt; and *A Reply to Critics*, by Theodore Marburg.

[2] *Vide infra*, p. 165.

[3] Mr. Robert Goldsmith has written a book, published at New York in 1917, to support the views of the American League.

[4] Mr. Woolf has more recently published a second book called *The Framework of a Lasting Peace* (1917). The body of the work is a useful reprint of the schemes of the several organizations, including a translation of the Minimum Programme of the Central Organization for a Durable Peace and the Draft Treaty framed by the Dutch Committee. The introduction makes little or no new contribution to the study of the subject.

4. Disputes arising from what may be called social relationship, *e.g.* as to questions of honour.[1]

The classification is not satisfactory; and, although Mr. Woolf attempts to bring two of the recent great wars, the Spanish-American and the Russo-Japanese, under one or other of these heads, he fails. He does not deal with the Boer War or attempt to classify the present War. He is a believer in International Law, and expresses himself to the following effect:

A large number of its rules are quite definitely admitted, are acted upon every day, and really do help to regulate pacifically international society. On the other hand, much of it is vague and uncertain. This is due largely to two facts: there is no recognized international organ for making International Law, and no judicial organ for interpreting it. The consequences are two: whenever new circumstances arise which require a new rule of conduct for nations, the nations concerned have to set about making the new rule by bargaining and negotiation. If they cannot agree, either it remains uncertain what the law is or the question has to be settled by war. Secondly, when there is already a rule, but nations disagree as to its interpretation, they again have to attempt by bargaining and negotiation to come to some agreement as to how it shall be interpreted. And again, if they cannot agree, the only method left is to cut the knot by war. (*Op. cit.* p. 13.)

Mr. Woolf makes some acute reflections on the difficulty of combining respect for the *status quo* with the legitimate desire of nationalities, now by force included in different States, to obtain separation and possibly amalgamation. He thus expresses himself:

The Union of Democratic Control urges the adoption of the principle that "no province shall be transferred from one Government to another without consent, by plebiscite or otherwise, of the population of such province". The adoption of this principle as part of the international constitution would indisputably be a great step forward, but one may point out that really to ensure a permanent peace it would be at least necessary to add: "Nor shall any province be compelled to remain under any Government against the consent of the population of such province." (*Op. cit.* p. 29.)

He summarizes his historical conclusions as follows:

1. A new system of international relationship began to appear in the last century. The pivot of the system was the making of inter-

[1] *International Government*, p. 10.

national laws and the regulation of certain international affairs at international Conferences of national representatives. The important part of the system was the expressed or unexpressed acceptance of the principle that such affairs could only be settled by the collective decision of the Powers.

2. The functions of these international Conferences may be of three different kinds, which in practice have not been clearly recognized and distinguished. Their functions may be:

(*a*) To come to a decision binding upon the States represented, *i.e.* to legislate; or

(*b*) To examine facts and express an opinion or issue a report; or

(*c*) To act as a Council of Conciliation or Mediation between two or more disputing States.

3. The efficacy of Conferences in preventing war and in settling international questions has been remarkable. It has, however, been limited by the fact that the submission of any question to a Conference has always been a subject for negotiation, and, therefore, only a move in the diplomatic game. The first step towards the peaceful regulation of international affairs would be to remove this question of submission altogether from the sphere of negotiation and diplomacy, and to define the cases in which a Conference must be called or could be demanded.

4. Little progress in the making of international laws by Conferences can be expected unless the rights of an international majority to bind a minority—if only an exceptionally overwhelming majority, in specific cases—are admitted and defined.

5. The development of Conferences into full international legislative bodies depends principally upon the possibility of:

(*a*) Agreement as to what are international questions which are to be submitted for collective decision to Conferences.

(*b*) Agreement as to the rights of an international majority to bind a minority. (*Op. cit.* pp. 42, 43.)

His constructive scheme is based upon the following principles. There are two classes of national disputes: the first, fitted for a Tribunal whether the members of it be called Judges or Arbitrators, where there is a dispute as to facts or the construction of Treaties and similar documents, or upon the construction and application of recognized International Law; and a second, in which the Arbitrators may, or may not, have to determine the facts and there is no law to guide them, and where, as he expresses it:

Certain persons must be selected by States as likely to be reasonable and open-minded, and such disputes will be referred to their decision,

which will represent a fair and reasonable settlement or compromise. (*Op. cit.* p. 44.)

He presumes that disputes of the first class will generally be referred to a Permanent International Court of Arbitration, and disputes of the second to an International Conference. But he thinks that there would be certain cases in which it would not be right to insist upon the *status quo* or rights thereby acquired; and that the existing principles of International Law may favour certain Great Powers—particularly his own country, Great Britain—too much. In cases of the latter sort it ought (he thinks) to be the right of a disputing State to have it considered by the International Conference whether the law ought not to be altered first, and then the case decided on; or, as the reference to the Tribunal of Arbitration would probably be unnecessary, he would allow the disputing State to claim that the whole matter be determined by the Conference, which would first make the law, and then adjudicate upon the law which it had made. He gets this idea from the Alabama Arbitration. It will probably be thought that this scheme is impracticable; and, as Mr. Woolf confesses, the State most likely to suffer would be his own.

For the constitution of his Tribunal of Arbitration he divides the States of the world into two classes: the eight so-called Great Powers, and the rest. He would have a Tribunal of seventeen Judges, each Great Power appointing one and the other States collectively electing nine; and he would exclude from the Court the representative or representatives of any disputing State. This might give a lesser Power, in case it were not directly represented by a subject of its own on the Tribunal, some advantage in a contest with a Great Power.

The international rights and obligations which would be defined and acknowledged under his system are as follows:

1. The obligation to refer all disputes and differences not settled by negotiation either to a tribunal or to a Conference.

2. The obligation in certain defined disputes and differences [1] referred to a Conference, to accept and abide by the decision of the majority of the representatives.

[1] *I.e.* those which would not affect the independence or the territorial integrity, or which would not require an alteration in the internal laws of a State.

3. The obligation to accept and abide by the judgment of a tribunal.

4. The obligation of a State to abide by every general rule of law and every decision made by a Conference and agreed to or ratified by that State.

5. The obligation to abide by certain defined general rules of law [1] made by a majority of the representatives in a Conference. (*Op. cit.* p. 75.)

Of these, he regards the first, third and fourth as of primary importance. He insists that there shall be what has above been called a *moratorium*. He says that the nations which compose the International Authority are to

> Agree to enforce, and actually enforce by every means in their power, the obligation of each individual State to refer a dispute or difference to tribunal or Conference before resorting to force of arms. (*Op. cit.* p. 77.)

He shrinks from definitely saying that force should be employed, but he seems to contemplate that either war or "economic and social pressure" would be used if necessary. He then passes to what he calls the "construction of some International Authority", and with a good deal of elaboration suggests a scheme of International Legislation by the Powers assembled in Conference, with a considerable predominance given to the eight Great Powers, and the right of a sufficiently large majority to bind the recalcitrant rest.

Part II. is devoted to an elaborate analysis of the extent to which, under existing conditions, nations are united and interpenetrated, and to an enumeration of a number of Unions, Postal and Telegraphic, Sanitary, and so forth, official or otherwise, which at present exist. Here and there the writer shows that he has not much knowledge of practical business; and this part will hardly repay perusal.

One idea, however, can be drawn from it. He points out, as is the fact, that in some of these Treaties the States with large Oversea Dominions are allowed additional votes. Thus, in the General Postal Union Treaty of the 1st June 1878,[2] by

[1] *I.e.* those which would not affect the independence or the territorial integrity, or which would not require an alteration in the internal laws of a State.

[2] Hertslet, *Treaties and Conventions between Great Britain and Foreign Powers so far as they relate to Commerce and Navigation*, vol. xiv. p. 1007.

Art. 21, Great Britain has one additional vote for British India and the Dominion of Canada; and votes are given to the Danish, Spanish, French, Dutch, and Portuguese colonies, one vote to each group. By the Telegraphic Convention of the 15th June 1897,[1] separate votes are given for India, Canada, Australasia, and the other British Colonies (afterwards declared to be South Africa); to the German, Danish, Spanish, Dutch, and Portuguese Colonies—each collectively; to the French Possessions in China, and a second vote to the other French Colonies. These cases seem to form precedents to be borne in mind, if any numerical Court of Arbitration should be hereafter established.

Part III. of *International Government* is the work of the Fabian Committee. It contains a draft code for the "establishment of a Supernational Authority".

There is to be an International High Court for the decision of justiciable issues, and an International Council to secure "by common agreement such International Legislation as may be practicable", and to promote the settlement of non-justiciable issues, with an International Secretariat or Bureau. All the constituent States are to bind themselves to abstain from war till they have first submitted their claim to the Court of Arbitration, or to the Council, for examination and report.

The International Council is to be framed, as in all these schemes, with a peculiar regard for the so-called eight Great Powers, each of whom is to appoint five representatives, while the other States are to appoint two each. There is elaborate provision for the subdivision of the Council into minor Councils:

(*a*) Of the eight Great Powers.
(*b*) Of the other Powers.
(*c*) Of the States of America.
(*d*) Of the States of Europe.

And the matter is so arranged that the eight Great Powers, if they are unanimous, have a practical veto upon any change.

The Court is to consist of fifteen Judges, one to be nominated by each of the eight, the other seven to be elected among the other States. (This gives the lesser States somewhat less than Mr. Woolf proposes.) A power of injunction *pendente lite* is to be given to the Court. Justiciable matters, as defined in the scheme, are to go to the Court; and the Court is to have a

[1] Hertslet, *op. cit.* vol. xxi. p. 484.

power of deciding whether the matter is within its jurisdiction or not.

It is contemplated that the Council will enter upon a considerable amount of legislation, and that on matters of secondary importance a three-fourths majority—provided that all the Great Powers are in the majority—should be capable of making a law.

Then there are two articles inserted by way of suggestion, and doubtfully. They are headed, "Provision for Abrogation of Obsolete Treaties", and "Provision for Cases in which International Law is vague, uncertain, or incomplete". These articles are an elaboration of Mr. Woolf's suggestion that in some cases, where a dispute arises, first new law shall be made, and then a decision given upon the new law.

The first part of the article (16A) is harmless enough, but quite unnecessary. It contemplates cases where an earlier Treaty has not been expressly repealed, but has been substantially abrogated. It is quite unnecessary to have any provision for such cases. The sting is in the latter part. A State is to be able to make a claim to have it declared that a Treaty, to which it is a party, has become obsolete

> . . . by reason of one or other independent Sovereign State concerned in such Treaty or Agreement having ceased to exist as such, or by reason of such a change of circumstances that the very object and purpose for which all the parties made the Treaty or Agreement can no longer be attained.[1]

In such a case, instead of the matter being submitted as a justiciable issue to the Court, it is to be brought before the Council, which may by a three-fourths majority, including all the Great Powers, decide that the Treaty is obsolete and ought to be abrogated; and shall thereupon promptly deal with the question in dispute as a non-justiciable issue.

Under 16B, a State may submit a claim that "the International Law applicable to such issue is so vague or so uncertain or so incomplete as to render the strict application thereof to the issue in question impracticable or inequitable". The Council is then, by the same majority, to have similar

[1] *International Government*, Part III. p. 251. This is a form of statement of the well-known International position as to the application of the doctrine *rebus sic stantibus*.

powers. It is to be observed that, though the size of the majority may perhaps be a sufficient protection, almost any alteration of law for the benefit of some favoured State, and to the detriment of the State in possession, might be brought about under one or other of these Articles.

The use of sanction for enforcing a decision of the Court, including an interlocutory injunction, is worked out under twelve heads:

(*a*) To lay an embargo on any or all ships belonging to the recalcitrant State;

(*b*) To prohibit any lending of capital or other moneys to the citizens . . . of the recalcitrant State, or to its national Government;

(*c*) To prohibit the issue or dealing in or quotation on the Stock Exchange or in the Press of any new loans . . . of the recalcitrant State, or of its national Government;

(*d*) To prohibit all postal, telegraphic, telephonic, and wireless communication with the recalcitrant State;

(*e*) To prohibit the payment of any debts due to the citizens . . . of the recalcitrant State, or to its national Government; and, if thought fit, to direct that payment of such debts shall be made only to one or other of the Constituent Governments . . .

(*f*) To prohibit all imports, or certain specified imports . . .

(*g*) To prohibit all exports, or certain specified exports . . .

(*h*) To prohibit all passenger traffic (other than the exit of foreigners) . . . to or from the recalcitrant State;

(*i*) To prohibit the entrance into any port of the Constituent States of any of the ships registered as belonging to the recalcitrant State, except so far as may be necessary for any of them to seek safety, in which case such ship or ships shall be interned;

(*j*) To declare and enforce a decree of complete non-intercourse with the recalcitrant State . . .

(*k*) To levy a special export duty on all goods destined for the recalcitrant State . . .

(*l*) To furnish a contingent of warships to maintain a combined blockade of one or more of the ports, or of the whole coastline, of the recalcitrant State. (*Op. cit.* pp. 253, 254.)

In the event of the State against which the decision goes engaging in war, and apparently also in the event of its entering into war before the matter has come before the Court or Council, the other signatory States are to make war upon it.

Part of this scheme of the Fabian Committee recalls the

paper constitutions which the Abbé Sieyès used from time to time to produce during the French Revolutionary Period.

(*e*) *The Union of Democratic Control.*—The four cardinal points in the policy of this Association are as follows:

1. No province shall be transferred from one Government to another without the consent, by plebiscite or otherwise, of the population of such province.

2. No Treaty, Arrangement, or Undertaking shall be entered upon in the name of Great Britain without the sanction of Parliament. Adequate machinery for ensuring democratic control of foreign policy shall be created.

3. The Foreign Policy of Great Britain shall not be aimed at creating Alliances for the purpose of maintaining the Balance of Power, but shall be directed to concerted action between the Powers, and the setting up of an International Council whose deliberations and decisions shall be public, with such machinery for securing international agreement as shall be the guarantee of an abiding peace.

4. Great Britain shall propose as part of the Peace settlement a plan for the drastic reduction, by consent, of the armaments of all the belligerent Powers, and to facilitate that policy shall attempt to secure the general nationalization of the manufacture of armaments, and the control of the export of armaments by one country to another.

And to these a fifth has lately been added:

5. The European conflict shall not be continued by economic war after the military operations have ceased. British policy shall be directed towards promoting commercial intercourse between all nations and the preservation and extension of the principle of the open door.

The Union has published a number of pamphlets. Some of the writers merely set forth the miseries and mischiefs of war, which we all know. Others maintain that the enemy, if properly approached, would come to reasonable terms, or even indicate their own views of what those terms might be, in such matters as the African Colonies, Turkey and the roads to the East, and Poland. Others, again, indulge in half-veiled complaints of the government of their own country. All, however, unite in advocating their particular panacea, which they call Democratic Control of Foreign Policy. Upon this last proposal, short and, it is apprehended, sufficient observation has already been made.

In several forms the writers favour a future League of Peace;

and Mr. Lowes Dickinson, who has written a number of works developing the idea, and is a prominent member of the British League of Nations Society, has contributed one pamphlet to the publications of the Union, *Economic War after the War*. The Union has also published, in a pamphlet called *Towards an International Understanding*, some contributions from French and Dutch sources, the only one of value being by Dr. Noci Van Suchtelen, of Holland, who in general terms favours a European Confederation as the only solution for the future.

(*f*) *The "Organisation Centrale pour une Paix Durable"*.—The Executive Committee of this body contains members from the belligerents of both sides, and from neutrals. Its minimum programme is as follows:

1. No annexation or transfer of territory shall be made contrary to the interests and wishes of the population concerned. Where possible, their consent shall be obtained by plebiscite or otherwise. The States shall guarantee to the various nationalities included in their boundaries equality before the law, religious liberty, and the free use of their native languages.

2. The States shall agree to introduce in their colonies, protectorates, and spheres of influence, liberty of commerce, or at least equal treatment for all nations.

3. The work of The Hague Conferences with a view to the peaceful organization of the Society of Nations shall be developed. The Hague Conference shall be given a permanent organization and meet at regular intervals. The States shall agree to submit all their disputes to peaceful settlement. For this purpose there shall be created, in addition to the existent Hague Court of Arbitration (*a*) a permanent Court of International Justice, (*b*) a permanent International Council of Investigation and Conciliation. The States shall bind themselves to take concerted action, diplomatic, economic, or military, in case any State should resort to military measures instead of submitting the dispute to judicial decision or to the mediation of the Council of Investigation and Conciliation.

4. The States shall agree to reduce their armaments. In order to facilitate the reduction of naval armaments, the right of capture shall be abolished and the freedom of the seas assured.

5. Foreign policy shall be under the effective control of the parliaments of the respective nations. Secret treaties shall be void.

It is somewhat strange that, advocating as it does in its third Article a permanent Court and a permanent Council, the

Organization should have issued among its "Rapports" a contribution from M. Henri Lambert, a Belgian, saying that peace is not a thing to be "organized", and that it seems to him that the great Supernational Council would have more need of peace than peace of it.[1]

The *Recueil de Rapports* issued by this Organization began in 1916, and now reaches four volumes, which contain Papers on the following subjects: the taking of plebiscites on proposed annexations; nationalities; freedom of trade; development of The Hague Conferences; International Court of Justice and Council of Conciliation; International Sanction; limitation of armaments; freedom of the seas; and parliamentary control of foreign policy.

Several of the writers have already published their views in separate form. Their new papers are not much more than repetitions of the old.[2] Some come from Germany and Austria-Hungary, and some from neutral States.

There is also an official commentary on the Minimum Programme (undated); an *Exposé des Travaux de l'Organisation*, by Chr. L. Lange of Christiania, 1917; and a separate pamphlet, *Le Contrat social des Nations*, by Prof. André de Maday (Neufchâtel, 1917). All the publications of the Organization emanate from The Hague.

The most important document is the Draft Treaty prepared by the Dutch Commission, which is also to be found in an English translation in Woolf's *The Framework of a Lasting Peace*. This Draft is preceded by an "Exposé des Motifs" (vol. i. pp. 240-93). Its plan is as follows: It takes the usual line of a Court and a Council of Conciliation, but as to the Court it differs from many of the other schemes, and in respect of the composition of the Court it shows a tendency to return to the older theory of arbitration. So also as to the Council. The nations which enter into the Federation are to choose a certain number of Judges for the one body and Councillors for the other. The matter is to be heard—whether it be by the Court or by a Committee of the Council—by a body consisting of two nominees of each of the contending States, with one

[1] "L'Organisation Centrale pour une Paix Durable," *Recueil de Rapports*, 1916, p. 145.

[2] Such as Mr. C. R. Buxton, Mr. Hobson, Mr. Aneurin Williams, and Mr. Thomas Raeburn White.

President or Umpire. He is to be chosen by agreement between the parties, or nominated by the appropriate Presidential Bureau. It is with this latter body that the real power will lie. It consists of a President and two Vice-presidents, chosen by a majority of votes from among the States forming the League, the eight Great Powers having each three votes, and all the others one. The Court is to sit on justiciable matters, defined in the ordinary way, with the addition that all matters which the States, as between themselves, have by any special Treaty agreed to submit to arbitration shall be called justiciable. If the States can agree upon their submission to arbitration (*compromis*) the Court will decide upon it. If they cannot agree upon the terms of their submission, they may ask the Court to frame it, when it will be called a *quasi-compromis*.

The Court can also act at the request of one party, if it appear that the matter in question is included in the list of those which by some special Treaty are to be referred to arbitration. But even here its jurisdiction is excluded if the other party denies that it is one of those matters, unless indeed it has been made part of the special Treaty that the Arbitral Tribunal shall decide upon its own competence or jurisdiction. With these exceptions the Draft Treaty returns to the old view of The Hague Convention of no compulsory arbitration except in rare and special cases. But, say the promoters, this defect is remedied by giving increased competence to the Council. The Council can act in the case of all disputes, either at the joint request of the parties, or if, for any reason, the Court is incompetent. So far good. But then, as the promoters with some *naïveté* explain, little harm is done to the sovereignty or independence of a State, because, though the Court decides by a majority, the Committee of the Council can only decide by a majority containing within it the vote of one at least of the representatives of the States against which the decision is given.

One matter is left to the whole Council by Article 107. If its Committee cannot decide, by reason that neither of the representatives of the State to be decided against agrees with the decision; or if neither party has appealed to the Court or Council over some dispute which exists between them; or even if there is no dispute but only reason to fear that a dispute will arise, the whole Council may sit in full session, the Great

Powers having three votes each. But then it can only give official advice (*avis d'office*).

This Draft Treaty is very elaborately worded, and there are, no doubt, some ingenious modes of avoiding difficulties. But it comes to very little; and its principal value is perhaps as showing that writers not of Anglo-American origin are more averse than others from interfering with the independence and sovereignty of various States.[1] The American writer, Mr. White, on the other hand, in his paper which appears in the same collection,[2] states that in his opinion it is the greatest objection to The Hague Convention, and to all the systems which arise from it, that the tribunals are composed of Judges named by the contending parties, who are practically certain to take the side of their own country, so that the real power of decision rests with one man, the Umpire or President.

It will be noticed that the Dutch scheme has no *moratorium*, and no clause binding the Treaty States to enforce obedience. There is, however, a clause (Art. 3) by which the several States bind themselves to respect and execute the decisions come to by Court or Council.

Mr. Aneurin Williams, who has a Paper in the same collection (vol. i. p. 233), would make it part of the Treaty that every State should obey, and that all other States should agree to compel it to obey, these decisions; but, as this might involve too great a derogation from independence and sovereignty, he would permit any State to withdraw from the Federation upon giving twelve months' notice.

3. A Permanent International Tribunal

Some useful criticisms upon the construction of a Permanent International Tribunal are to be found in an article by Chief Justice Beichmann, of Norway, in vol. xxi. of *Scienta*.[3] Dr. Beichmann was, and probably still is, one of the Norwegian representatives on The Hague Court. He thinks that a Permanent International Court of Justice will not be a very efficacious mode of preventing war He observes that wars

[1] Compare Chief Justice Beichmann's pamphlet, referred to later on.

[2] Vol. i. p. 317.

[3] A scientific Review published at Bologna, and also by Williams and Norgate of London.

are rarely provoked by justiciable disputes. Political conflicts, he remarks, are those which really endanger peace; and therefore he thinks that recourse to arbitration, the Arbitrator being selected from the members of The Hague Tribunal, has an advantage for two reasons: (1) that the Arbitrators appointed by each nation will act as Conciliators or Negotiators, and be in this way more useful than they would be as Judges; (2) that the Tribunal ought to have the full confidence of the parties, and that each State should have confidence in its own Arbitrators, and (owing to the method of choosing the Umpire) in the Umpire as well.

His view is that the present war will make it more difficult than it was to form a Confederation of the States of Europe, or to get any State to derogate from its sovereign rights in favour of a new central organization, executive or legislative; that there will be so much rancour between the contending parties, and so much irritation among the neutral States at the way in which belligerents have used their powers, that they would never agree upon any International Tribunal. He further points out that, if there is to be a Tribunal competent to settle all sorts of disputes between States, every State will desire to be represented upon the Tribunal, as its decisions (at least, this appears to be his view) will not only bind the parties, but form precedents of International Law.

In a volume of Essays called *The Ministry of Reconciliation*, edited by Mr. Hugh Martin, and published in March 1916, Dr. Evans Darby, former Secretary of the Peace Society, and the author of the most complete work on International Arbitration, has an Essay on "The Political Machinery of International Peace". In it he refers "to the advantages of such confederations as the Swiss and German, and that of the United States". He proceeds:

> Enough has been recorded to show that Federalism is no new or untried or impractical policy. It dominates half the world in all its continents. It is assumed, often unconsciously, by current discussions about international justice, international police, and the use of force for the maintenance of international relations. Without it these could not exist, for the very effort to establish them would involve some kind of Federation. This was abundantly illustrated in the last Peace Conference at The Hague by the failure, after strenuous efforts and after complete unanimity had generally been manifested, to establish

a "Court of Arbitral Justice", the only thing established being that the Powers represented were not prepared for any general Court of Control. (*Op. cit.* p. 74.)

In the second volume of the Publications of the Grotius Society (1916), Dr. Darby has a Paper on "The Enforcement of The Hague Conventions", read before the Society on the 28th November 1916, in which he criticizes the proposals of the American League for the Enforcement of Peace, but returns to the idea of some form of Federation or Union, which is to have an International Police and International Administration. But at the same time, consistently with his well-known views, he opposes the enforcement of any Treaty by war.[1]

He has again expressed himself at a meeting of the Peace Society as not being enthusiastic for a League of Nations for the enforcement of peace, on the grounds that peace cannot be enforced without war or the threat of war, and that the Federation of the World cannot be secured by an International Army, even if it is labelled International Police.[2] The Peace Society seems to hold the same views.[2] The Dutch Committee, Chief Justice Beichmann, Dr. Darby, and perhaps the Peace Society, are upon the whole to be treated as adherents to the older system of arbitration.

A book entitled *Towards a Lasting Settlement* (undated, but published early in the War), edited by Mr. C. R. Buxton, has among its articles one on "The Basis of Permanent Peace", by Mr. G. Lowes Dickinson, and one on "The Organization of Peace", by Mr. H. N. Brailsford.

Mr. Dickinson has published several other pamphlets, *The War and the Way Out*, which has gone through a second edition (again undated, but written before the Revolution in Russia and the entry of the United States into the War); a pamphlet, *After the War*, published in 1915; another, *Economic War after the War*, for the Union of Democratic Control, published in August 1916; and his last and probably most complete work, *The Choice before Us*, published in April 1917. He is a member of the League of Nations Society.

[1] The Grotius Society has published other papers on the subject, including one by Dr. Bisschop on "The Advantage of International Leagues", vol. ii.; read before the Society, November 14 1916.

[2] *The Herald of Peace*, October 1917.

In *The War and the Way Out* he contemplates a future Europe rearranged on "a basis of nationality instead of on a basis of States", which he says "would be a Europe ripe for a permanent league". He proceeds:

To secure the peace of Europe, the peoples of Europe must hand over their armaments, and the use of them for any purpose except internal police, to an international authority. This authority must determine what force is required for Europe as a whole, acting as a whole in the still possible case of war against Powers not belonging to the League. It must apportion the quota of armaments between the different nations according to their wealth, population, resources, and geographical position. And it, and it alone, must carry on, and carry on in public, negotiations with Powers outside the League. All disputes that may arise between members of the League must be settled by judicial process. And none of the forces of the League must be available for purposes of aggression by any member against any other.

With such a League of Europe constituted, the problem of reduction of armaments would be automatically solved. Whatever force a united Europe might suppose itself to require for possible defence would clearly be far less than the sum of the existing armaments of the separate States.[1]

In the Preface to the second edition (p. 4), he says:

I do not imagine a federation of Europe to be possible in an immediate future. What I do believe to be possible, as soon as the war is over, is a League of the Powers to keep the peace of Europe.

In his pamphlet *After the War*, he writes:

There was a time when the whole civilized world of the West lay at peace under a single rule; when the idea of separate Sovereign States, always at war or in armed peace, would have seemed as monstrous and absurd as it now seems inevitable. And that great achievement of the Roman Empire left, when it sank, a sunset glow over the turmoil of the Middle Ages. Never would a mediæval churchman or statesman have admitted that the independence of States was an ideal. It was an obstinate tendency, struggling into existence against all the preconceptions and beliefs of the time. "One Church, one Empire", was the ideal of Charlemagne, of Otho, of Barbarossa, of Hildebrand, of Thomas Aquinas, of Dante. The forces struggling against that ideal were the enemy to be defeated. They won. And thought, always

[1] *The War and the Way Out*, pp. 41, 42.

parasitic on action, endorsed the victory. So that now there is hardly a philosopher or historian who does not urge that the sovereignty of independent States is the last word of political fact and political wisdom.

And, no doubt, in some respects it has been an advance. In so far as there are real nations, and these are coincident with States, it is well that they should develop freely their specific gifts and characters. The good future of the world is not with uniformity, but with diversity. But it should be well understood that all the diversity required is compatible with political union. The ideal of the future is federation; and to that ideal all the significant facts of the present point. . . .

The Powers, I propose, should found a League of Peace, based on a Treaty, binding them to refer their disputes to peaceable settlement before taking any military measures. (*Op. cit.* pp. 20, 21, 26.)

He proceeds to consider the sanction of the Treaty. His view is that men are to rely on law, not on force. But, after paying a tribute to the sincerity of those who would act up to their principles, he feels driven to admit that there must be the sanction of force. He says:

It will be impossible, I believe, to win from public opinion any support for the ideas I am putting forward, unless we are prepared to add a sanction to our treaty. I propose, therefore, that the Powers entering into the arrangement pledge themselves to assist, if necessary, by their national forces, any member of the League who should be attacked before the dispute provoking the attack has been submitted to arbitration or conciliation.[1]

Military force, however, is not the only weapon the Powers might employ in such a case; economic pressure might sometimes be effective.

And he proceeds to discuss suggestions for arbitration and for a Council of Conciliation.

The Choice Before Us is his latest work, and the most elaborate. The first half of the book is a powerful exposition of the evils of war. Even in this there are passages which are already out of date, and there is a good deal of very controversial matter. But this does not detract from the value of the latter half of

[1] It is in this case only that the Powers would be pledged to employ force, if other means fail. As will be seen below, it is not proposed that they should bind themselves to employ force to ensure the performance of an award of the Court of Arbitration, or the adoption of a recommendation of the Council of Conciliation. (*Op. cit.* p. 27.)

the book. He again puts forward the scheme of a League of Nations. He says:

A European State, and *a fortiori* a World State, even in a form of the loosest federation that could be called a State, is not at present a serious political conception.

But we are not therefore driven back at once upon international anarchy. The problem is to find the greatest measure of organization which the state of feeling and intelligence that will exist after the war will tolerate. I think it clear that they [*sic*] will not tolerate a World State, nor yet a European State. What less than this might they tolerate? (*Op. cit.* p. 172.)

He proceeds to contemplate a League founded upon Treaty. As to the objection that Treaties will not be observed, he remarks:

Grant the continued existence of independent States, and they can only organize by treaty. And the fulfilment of the treaty must depend, in the last resort, on their sense of honour or of interest, or of both. . . .

But a treaty that is to guarantee justice and peace must be of a new kind. Its object is not to strengthen some States against others, but to substitute in some way and in some measure (presently to be discussed) peaceable settlement for war. And the first point to be made is that it belongs to the nature of such a treaty that it should be open to all civilized nations desiring to come in. For to exclude any nation is to announce that between it and the contracting nations war, not peaceable settlement, is to be the rule. On the other hand, a nation refusing to come in would offer a presumption that it intends to continue the way of war. It would announce itself a potential enemy of the others, against which they must continue to guard themselves. And, should any State or States announce such a policy, the treaty would in effect constitute a defensive alliance against such a State or States. (P. 173.)

He assumes that if the Great Powers come in, the smaller States will be willing to join, and proceeds:

The practical question would then be, not who should be admitted, but who, if any, should be excluded. The only tests to apply here would be that of capacity for deliberative action and that of public honesty. The representatives of no State must be purchasable. What States might be legitimately excluded by such tests as these it will be a difficult and invidious task to determine. It is superfluous, and would, indeed, be pedantic, to attempt it here. But it must be remarked that a League from which all small States, as such, should be excluded

would be viewed by those States with great suspicion. For it might well look like a League for disposing unjustly of their interests. On the other hand, it is certain that in any League that might be formed the great States would predominate. The small States would have perforce to be content with the right to represent their views fairly and effectively. (P. 175.)

The primary object of this League would be to keep peace. For this purpose he proposes that there should be an obligation on all the parties to "refer disputes to peaceable settlement in the first instance, leaving open an ultimate resort to force". During the interval of discussion with a view to peaceable settlement, he would forbid not only war but preparation for war. He feels the difficulty of defining "preparation for war", and makes some suggestions. He holds that:

> There must not be, during this interval, a continuance of the act that is the cause of the dispute. This means that the Court or the Council, or both, must have the power of injunction. And, if a sanction is to be applied (a point to be discussed presently), there must be a sanction against breach of the injunction. (P. 177.)

He assumes that any State would be reluctant to embark upon war in defiance of a decision of the International Authority, would be very unlikely to find allies, and would probably find the other parties to the Treaty intervening by force against it. He does not in terms deal with the case where the State against which the International Authority had pronounced simply paid no attention to the decision; but apparently he would contemplate with equanimity the other State embarking upon war to enforce the decision.

He follows the League, of which he is a member, in dividing disputes into "justiciable" and "non-justiciable" cases, and sending the one to an International Tribunal, and the other to a Council of Conciliation.

He devotes a chapter to "Sanctions of the Treaty", but cannot apparently make up his mind whether a sanction can be put "behind the decisions of the International Court of Justice". He suggests that perhaps the sanction need not be that of armed force, and that it might be possible in some cases to apply an economic boycott. He does, however, accept the use of force by the other members of the League collectively

against any member who goes to war before the *moratorium* has expired. He determines that, "if the League is to have a reasonable chance of fulfilling its purpose", there should be a clause in the Treaty limiting armaments.

In Chapter XII., which is entitled "International Regulations and Administration", Mr. Dickinson makes an advance beyond the scheme of the League of Nations Society. He wishes States to "learn to legislate and administer in common". He contemplates the enforcement of Free Trade tempered by provisions against "trading methods generally recognized as unfair", provisions for enforcing the open door with only certain restrictions upon immigration; and, in fact, a Federation which would absorb much of the sovereignty of the Federated States.

Mr. Hobson is another writer upon the subject. He contributed a pamphlet to the publications of the Union of Democratic Control.[1] He has also written a book entitled *Towards International Government* (1916). Much of it follows the general run of writers since the War in the division of disputes, in the reference to Court or Council as the case may be, and the desirability of a Federation for these purposes. He is, however, frankly critical of some of the proposals. For instance, he gives up the problem of a general reduction of armaments as hopeless (Chap. I.). And he shows very forcibly the difficulties which would attach to the proposed economic boycott as a measure for enforcing compliance, and the great probability that any such boycott would lead to war (Chap. VII.). He is strongly against Protection (Chap. XI.).

He dislikes all appointments of arbitrators *ad hoc*, and indeed objects to arbitrations (as opposed to a Court) as leading to compromises, and to the neglect of opportunities of laying down sound principles of International Law.[2] He wants all orders carried out by force, even those which may be made by a Council of Conciliation, and attaches little weight to suggestions of those who, like Dr. Darby and the Peace Society, would rely "upon conscience, the inner sense of justice, and on public opinion" (Chaps. VI., XI.).

His views tend strongly towards a super-State. He thinks

[1] *A League of Nations*, No. 15*a*. Published October 1915.

[2] See pp. 40, 61. The contrary view of Chief Justice Beichmann has been mentioned.

that International Government is the real cure; and he advocates an International Executive and a Legislature which is to have power to act upon the vote of a majority, notwithstanding the dissent of the representatives of some States, and in which the larger States are to have a preponderance of votes (Chaps. IX., X.).

Mr. Brailsford, as already stated, wrote an article on the "Organization of Peace" in the collection entitled *A Lasting Settlement*. He also contributed a pamphlet included among the publications of the Union of Democratic Control, and he has since then written a book entitled *A League of Nations* (1917). This work is already out of date in respect of its references to the United States and to Russia. He is opposed to any trade discriminations against Germany after the peace, and he has a powerful argument in favour of Free Trade in the future (Chap. IX.). Notwithstanding this argument, he admits the principle of State Control of Commerce, while he proposes, as some mitigation of the injuries which might thereby be done to certain nations, to give the aggrieved State a right to appeal to some International Commission on Commerce.

He would propose to begin his League of Peace with the Allies only (pp. 19, 81-4), an idea which many other writers have strongly deprecated as tending to form two rival camps. He is an advocate of force (pp. 194, 301), and is opposed to what he calls a "static peace" (pp. 75-9), holding that racial, economic, and colonial problems are incapable of a permanent solution.

In his final chapter he has some new suggestions, and is at the same time somewhat critical of various other writers who are nevertheless of his School. He suggests:

1. That every adherent of the League must agree to respect the cultural liberty of racial minorities;

2. That the obligations of allies to each other must, in case of conflict, yield to their obligation to the League;

3. That the extremer uses of sea-power shall be reserved for wars declared or sanctioned by the League; [1]

4. That a general recognition of commercial freedom and commercial amity shall obtain within the League, which will by international commissions safeguard the "Open Door" for capital and trade, and ensure free access to raw materials in an open market. (Pp. 287, 288.)

[1] This is an ingenious suggestion, and worthy of consideration.

He agrees with the usual division into matters for a Court and matters for a Council; but he would not have it that

> the States involved shall pledge themselves to accept the Council's recommendations, nor that the League itself shall be bound to enforce them. The essence of the obligation is simply that no member of the League will go to war until his case has been submitted to the Council of Conciliation, and for some short period after it has made its report. (P. 290.)

He is not hopeful of the *moratorium* as a soother of the warlike temper, and he shows the great difficulty of enforcing it by reason of the impossibility of drawing the line where warlike preparations begin, and the advantage which any stay of preparations for war would give to a military State already prepared for aggression. Still, however, he considers,

> The fundamental obligation is that no member of the League shall go to war [or mobilize its army or fleet] until it has submitted its case to arbitration or conciliation and allowed an interval [of six months?] to elapse after the Council or Tribunal has issued its recommendation or award. (P. 292.)

And he thinks that

> The possibility of a war by the League against some defiant Power cannot be ignored, and ought not to be minimized. However the obligation to join in such a war may be worded, it would be cowardly to shirk the central fact that the League must contemplate the possibility of such common wars. (P. 293.)

But, when he comes to consider how force shall be applied, his pages comprise difficulties rather than practical suggestions. He points out the vagueness of the proposals of the American League to Enforce Peace, and of the British League of Nations Society. He shows how difficult it would be for any Power which has been party to the Great War to co-operate, for many years to come, with one of its present enemies, or to coerce one of its present allies. He shows also how delicate would be the position of small States, and how unlikely it would be for remote States to interfere, while, if the League was dominated by the Great Powers, it might "come to bear an unpleasant resemblance to The Holy Alliance"; and he concludes this part of his discussion as follows:

> The fact is that we are not yet sufficiently in possession of the

continental view to carry this discussion very far as yet. It must inevitably differ somewhat from the British and American view. The question whether the League is workable depends very little upon paper treaties. (P. 296.)

Notwithstanding these cautions he proceeds to provide a constitution of the League, avowedly following to a great extent the work of the Fabian Society and Mr. Woolf. He wants a Court and Council of Conciliation, an Executive, and a Legislature, in all of which the Great Powers are to have larger rights of voting than the smaller ones; and his notion of an Executive is that it probably ought to represent only the Great Powers. (P. 302.)

He would use sea-power as a weapon for States carrying out the common interest, but would absolve neutrals from compliance with the present laws of war at sea (with certain exceptions), in cases where the war was "undertaken by the uncontrolled will of a single State in pursuit of its own national interests, however legitimate these may be". (P. 206.)

Auguste Schvan has written a book called *Les Bases d'une Paix Durable*. The writer describes himself as a Swede who was first in the Austrian army, then in that of his own country with a training in a Prussian School of Arms, and afterwards in the Swedish Diplomatic Service, which he left in disgust to come to England. He says that he offered his services to the English army when war broke out, but was refused, and that he subsequently went to the United States and carried out a very effective anti-German propaganda.

The first part of his book is trenchantly critical of all previous proposals for securing a general peace in the future. The third chapter is called "La Faillite de Pacifisme". In this chapter he contends that an economic boycott would have had no effect to prevent the present war; and that the establishment of it as a future means of constraint would only mean that each State would render itself as self-sufficing and self-contained as possible. He also contends that the proposed Democratic Control, which is the panacea of some, would not tend towards peace, on the ground that democracies are "as nationalist, as blindly patriotic, as imperialist, as full of prejudices and hypocrisy, as an aristocracy or an autocracy".[1]

[1] P. 70. The original is in French.

He is opposed to the idea of an International Parliament (which perhaps has hardly been seriously proposed); and, with regard to the somewhat attractive proposal that all private undertakings for the manufacture and supply of armaments and munitions should be suppressed as tending to make it a commercial interest of great capitalists to promote war, he makes some shrewd suggestions (pp. 67-9). He points out that, in the event of a nation, which had not State arsenals of its own or only insufficient ones, becoming involved in war with a militarist enemy who had devoted his energies in time of peace to the perfecting of his naval and military armaments, the more peaceable and less prepared State would find itself at the mercy of the other. There would be no private commercial firms on which it could rely; and it would be a breach of neutrality for any other State to supply it from a national arsenal.

He especially attacks the American League to Enforce Peace, which, he says, does not really differ from the old European Concert; it would leave each member of the League bound to maintain its full military establishment, and just as likely to lose its head in a crisis as were several of the present belligerents.

His destructive criticisms certainly merit attention; but his constructive proposals, to which the greater portion of the book is devoted, are almost unintelligible. The main idea is that there should be a World Law and a World Court of Justice, and indeed, a World State. What are now known as States are to be "stripped of sovereignty and independence, and transformed into subdivisions of humanity". (P. 142.)

His view apparently is that the present States should be reduced in area; that each entity to which it would be reasonable to grant Home Rule should become a separate subdivision of humanity; that in cases where rival nationalities are incurably intermixed the minority should be forcibly transplanted; that undeveloped countries should be administered internationally; that there should be a World Court sitting in fifty-five divisions, and composed of about 275 Judges—five for each division. Before this Court, States or Governments could not come, at any rate as plaintiffs. The plaintiffs would be individuals who would complain of injuries received from some subdivisional Government. The navies and armies of the world would be reduced to a strength adequate for police purposes by land and sea.

When one asks how all this is to be effected, one gets little help. The chief effective provisions seem to be that no citizen is to swear allegiance to any State; that every man is to be a citizen of the world, subject to the administration and tribunals of the subdivision in which he happens to find himself from time to time; and that there should be universal and uncontrolled Free Trade without any Customs barriers.

Mr. Jacobs has written a very suggestive little book [1] which he has supplemented by a broadsheet, issued in May 1918. His idea is that there should be no neutrals and no neutrality, because every war should be construed as a crime against mankind, and "breach of the peace" between nations to be treated as breach of the peace in domestic matters, and summarily restrained by the strong hand. He would have as many States as possible enter into a treaty to "defend the territorial integrity of each, no matter by whom or for what reason attacked". He starts with the following propositions or aphorisms:

That the time-honoured policy of Neutrality towards Belligerents is incompatible with national safety or international justice.

That there is a safe and practical alternative policy based on the opposite principle of Mutual Protection requiring neither arbitration nor disarmament agreements. . . .

That the apparent impracticability of a general defensive alliance, without the simultaneous acceptance of an international tribunal, is a demonstrable fallacy.

That a real system of International Law and the machinery for its administration cannot be secured by any paper guarantees, but must inevitably evolve from the situation created by an international alliance for territorial defence.

The prevailing idea of his book is that, if States be prevented from fighting, they will arrange for some method of settling their differences, and that some form or forms of international tribunals will ultimately be evolved. But he does not suggest that all forms of conflict should come to an end; he would permit of reprisals of all sorts, provided they did not take the form of invasion of territory by an armed force. In his supplementary broadsheet he has endeavoured to provide against naval or aerial attacks; but these provisions do not seem to cover

[1] *Neutrality versus Justice*, by A. J. Jacobs.

warfare on the high seas. His proposals require that the territorial limits of States should previously be settled and accurately ascertained. The form which his sanction would take would be that the other States of the Confederacy should jointly declare war against the State which invaded the territory of another. The defect of his scheme in this respect is that the States are only to be required to act jointly, so that, if any one, or at any rate any powerful one, were to hang back, the whole scheme would apparently fall through.

Notwithstanding these defects, his general idea is well deserving of further elaboration. He differs from all the associations and writers to whom reference has previously been made, in that he makes no provision for international Courts or Councils, which, indeed, he regards as for the moment impossible to create, his view being that they will be evolved in process of time, as nations find that they are debarred from serious fighting and will have to discover some other mode of settling their differences.

As the War proceeds, the idea of the formation of a league for preserving peace in future is receiving more and more adhesions. Further declarations in this sense have been made by Austrian and German statesmen. The Resolution of the Conference of the Socialist and Labour Parties of Allied Nations, February 14, 1915, to this effect was reaffirmed by the Inter-Allied Labour and Socialist Conference in London, held on February 20, 1918.

To these should be added a declaration by the *Comité d'entente pour la Société des Nations*, February 1918; a letter of *L'Union fédérative de la libre pensée de France* to President Wilson, March 1918; and a weighty letter by the Archbishop of Canterbury and others, which appeared in *The Times*, February 22, 1918.

May 1918.

APPENDIX E

THE DRAFT COVENANT WHICH WAS USED AS A BASIS FOR DISCUSSION BY THE COMMISSION ON THE LEAGUE OF NATIONS

DRAFT COVENANT

Preamble

In order to secure international peace and security by the acceptance of obligations not to resort to the use of armed force, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments, and by the maintenance of justice and a scrupulous respect for all treaty obligations in the dealings of organized peoples with one another, and in order to promote international co-operation, the Powers signatory to this Covenant adopt this constitution of the League of Nations.

Article 1

The action of the High Contracting Parties under the terms of this Covenant shall be effected through the instrumentality of meetings of Delegates representing the High Contracting Parties, of meetings at more frequent intervals of an Executive Council representing the States more immediately concerned in the matters under discussion, and of a permanent International Secretariat to be established at the capital of the League.

Article 2

Meetings of the Body of Delegates shall be held from time to time as occasion may require for the purpose of dealing with matters within the sphere of action of the League.

Meetings of the Body of Delegates shall be held at the capital of the League, or at such other place as may be found convenient, and shall consist of not more than two representatives of each of the High Contracting Parties.

An Ambassador or Minister of one of the High Contracting Parties shall be competent to act as its representative.

All matters of procedure at meetings of the Body of Delegates, including the appointment of committees to investigate particular matters, shall be regulated by the Body of Delegates, and may be decided by a majority of those present at the meeting

Article 3

The representatives of the States members of the League directly affected by matters within the sphere of action of the League will meet as an Executive Council from time to time as occasion may require.

The United States of America, Great Britain, France, Italy, and Japan shall be deemed to be directly affected by all matters within the sphere of action of the League. Invitations will be sent to any Power whose interests are directly affected, and no decision taken at any meeting will be binding on a State which was not invited to be represented at the meeting.

Such meetings will be held at whatever place may be decided on, or, failing any such decision, at the capital of the League, and any matter affecting the interests of the League, or relating to matters within its sphere of action or likely to affect the peace of the world, may be dealt with.

Article 4

The permanent Secretariat of the League shall be established at ——, which shall constitute the capital of the League. The Secretariat shall comprise such secretaries and staff as may be required, under the general direction and control of a Chancellor of the League, by whom they shall be appointed.

The Chancellor shall act as Secretary at all meetings of the Body of Delegates or of the Executive Council.

The expenses of the Secretariat shall be borne by the States members of the League in accordance with the distribution among members of the Postal Union of the expenses of the International Postal Union.

ARTICLE 5

Representatives of the High Contracting Parties and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities and the buildings occupied by the League or its officials or by representatives attending its meetings shall enjoy the benefits of extraterritoriality.

ARTICLE 6

Admission to the League of States who are not signatories of this Covenant requires the assent of not less than two-thirds of the Body of Delegates.

No State shall be admitted to the League except on condition that its military and naval forces and armaments shall conform to standards prescribed by the League in respect of it from time to time.

ARTICLE 7

The High Contracting Parties undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all States members of the League.

ARTICLE 8

The High Contracting Parties recognize the principle that the maintenance of peace will require the reduction of national armaments to the lowest point consistent with domestic safety and the enforcement by common action of international obligations; and the Executive Council shall formulate plans for effecting such reduction. It shall also enquire into the feasibility of abolishing compulsory military service, and the substitution therefor of forces enrolled upon a voluntary basis, and into the military and naval equipment which it is reasonable to maintain.

The High Contracting Parties further agree that there shall be full and frank publicity as to all national armaments and military or naval programmes.

ARTICLE 9

Any war or threat of war, whether immediately affecting any of the High Contracting Parties or not, is hereby declared a matter of concern to the League, and the High Contracting

Parties reserve the right to take any action that may be deemed wise and effectual to safeguard the peace of nations.

It is hereby also declared and agreed to be the friendly right of each of the High Contracting Parties to draw the attention of the Body of Delegates, or of the Executive Council, to any circumstances anywhere which threaten to disturb international peace, or the good understanding between nations upon which peace depends.

Article 10

The High Contracting Parties agree that should disputes arise between them which cannot be adjusted by the ordinary processes of diplomacy, they will in no case resort to armed force without previously submitting the question and matters involved either to arbitration or to enquiry by the Executive Council, and until three months after the award by the arbitrators or a recommendation by the Executive Council; and that they will not even then resort to armed force as against a member of the League which complies with the award of the arbitrators, or the recommendation of the Executive Council.

Article 11

The High Contracting Parties agree that whenever any dispute or difficulty shall arise between them which they recognize to be suitable for submission to arbitration, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration, and will carry out in full good faith any award or decision that may be rendered.

Article 12

The Executive Council will formulate plans for the establishment of a Permanent Court of International Justice, and this Court will be competent to hear and determine any matter which the parties recognize as suitable for submission to it for arbitration under the foregoing Article.

Article 13

If there should arise between States members of the League any dispute likely to lead to a rupture, which is not submitted

to arbitration as above, the High Contracting Parties agree that they will refer the matter to the Executive Council; either party to the dispute may give notice to the Chancellor of the existence of the dispute, and the Chancellor will make all necessary arrangements for a full investigation and consideration thereof. For this purpose the parties agree to communicate to the Chancellor statements of their case with all the relevant facts and papers.

Where the efforts of the Council lead to the settlement of the dispute, a statement shall be prepared for publication indicating the nature of the dispute and the terms of settlement, together with such explanations as may be appropriate. If the dispute has not been settled, a report by the Council shall be published, setting forth with all necessary facts and explanations the recommendations which the Council think just and proper for the settlement of the dispute. If the report is unanimously agreed to by the members of the Council, other than the parties to the dispute, the High Contracting Parties agree that none of them will go to war with any party which complies with its recommendations. If no such unanimous report can be made, it shall be the duty of the majority to issue a statement indicating what they believe to be the facts and containing the recommendations which they consider to be just and proper.

The Executive Council may in any case under this Article refer the dispute to the Body of Delegates. The dispute shall be so referred at the request of either party to the dispute. In any case referred to the Body of Delegates all the provisions of this Article relating to the action and powers of the Executive Council shall apply to the action and powers of the Body of Delegates.

Article 14

Should any of the High Contracting Parties be found by the League to have broken or disregarded its covenants under Article 10, it shall thereby *ipso facto* be deemed to have committed an act of war against all the other members of the League, which shall immediately subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention, so far as possible, of all financial, commercial, or personal intercourse between the nationals of the covenant-

breaking State and the nationals of any other State, whether a member of the League or not.

It shall be the duty of the Executive Council in such a case to recommend what effective military or naval force the members of the League shall severally contribute to the armed forces to be used to protect the Covenants of the League.

The High Contracting Parties agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article in order to minimize the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State, and that they will afford passage through their territory to the forces of any of the High Contracting Parties who are co-operating to protect the covenants of the League.

Article 15

In the event of disputes between one State member of the League and another State which is not a member of the League, or between States not members of the League, the High Contracting Parties agree that the State or States not members of the League shall be invited to become *ad hoc* members of the League, and upon acceptance of any such invitation, the above provisions shall be applied with such modifications as may be deemed necessary by the League.

Upon such invitation being given the Executive Council shall immediately institute an enquiry into the circumstances and merits of the dispute and recommend such action as may seem best and most effectual in the circumstances.

In the event of a Power so invited refusing to become *ad hoc* a member of the League, and taking any action against a State member of the League, which in the case of a State member of the League would constitute a breach of Article 10, the provisions of Article 14 shall be applicable as against the State taking such action.

If both parties to the dispute when so invited refuse to become *ad hoc* members of the League, the Executive Council may take such action and make such recommendations as will prevent hostilities, and will result in the settlement of the dispute.

ARTICLE 16

The High Contracting Parties entrust to the League the general supervision of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest.

ARTICLE 17

The High Contracting Parties agree that in respect of territories which formerly belonged to the German Empire or to Turkey, and which are inhabited by peoples unable at present to secure for themselves the benefits of a stable administration, the well-being of these peoples constitutes a sacred trust for civilization, and imposes upon the States members of the League the obligation to render help and guidance in the development of the administration. They recognize that all policies of administration or economic development should be based primarily upon the well-considered interests of the peoples themselves, upon the maintenance of the policy of the open door, and of equal opportunity for all the High Contracting Parties in respect of the use and development of the economic resources of the territory. No military or naval forces shall be formed among the inhabitants of the territories in excess of those required for purposes of defence and of internal police.

ARTICLE 18

The High Contracting Parties will work to establish and maintain fair hours and humane conditions of labour for all those within their several jurisdictions, and they will exert their influence in favour of the adoption and maintenance of a similar policy and like safeguards wherever their industrial and commercial relations extend. Also they will appoint commissions to study conditions of industry and labour in their international aspects, and to make recommendations thereon, including the extension and improvement of existing conventions.

ARTICLE 19

The High Contracting Parties agree that they will make no law prohibiting or interfering with the free exercise of religion,

and that they will in no way discriminate, either in law or in fact, against those who practise any particular creed, religion, or belief whose practices are not inconsistent with public order or public morals.

Article 20

The High Contracting Parties will agree upon provisions intended to secure and maintain freedom of transit and just treatment for the commerce of all States members of the League.

Article 21

The High Contracting Parties agree that any treaty or international engagement entered into between States members of the League shall be forthwith registered with the Chancellor, and as soon as possible published by him.

Article 22

The High Contracting Parties severally agree that the present Covenant is accepted as abrogating all obligations *inter se* which are inconsistent with the terms hereof, and solemnly engage that they will not hereafter enter into any engagements inconsistent with the terms hereof.

In case any of the Powers signatory hereto, or subsequently admitted to the League shall, before becoming a party to this Covenant, have undertaken any obligations which are inconsistent with the terms of this Covenant, it shall be the duty of such Power to take immediate steps to procure its release from such obligations.

APPENDIX F

PLAN OF LORD ROBERT CECIL[1]

LEAGUE OF NATIONS

I. ORGANIZATION

THE general treaty setting up the League of Nations will explicitly provide for regular conferences between the responsible representatives of the contracting Powers.

These conferences would review the general conditions of international relations and would naturally pay special attention to any difficulty which might seem to threaten the peace of the world. They would also receive and as occasion demanded discuss reports as to the work of any international administrative or investigating bodies working under the League.

These conferences would constitute the pivot of the League. They would be meetings of statement responsible to their own sovereign Parliaments, and any decisions taken would therefore, as in the case of the various allied conferences during the war, have to be unanimous.

The following form of organization is suggested:

1. *The Conference.*—Annual meeting of Prime Ministers and Foreign Secretaries of British Empire, United States, France, Italy, Japan and any other States recognized by them as great Powers. Quadrennial meeting of representatives of all States included in the League. There should also be provision for the summoning of special conferences on the demand of any one of the great Powers or, if there were danger of an outbreak of war, of any member of the League. (The composition of the League will be determined at the Peace Conference. Definitely untrustworthy and hostile States, *e.g.* Russia, should the

[1] Extracted from the Hearings before the Committee on Foreign Relations, United States Senate, Sixty-sixth Congress, First Session on the Treaty of Peace with Germany, signed at Versailles on June 28, 1919, pp. 1163-1164.

Bolshevist government remain in power, should be excluded. Otherwise it is desirable not to be too rigid in scrutinizing qualifications, since the small Powers will in any case not exercise any considerable influence.)

2. For the conduct of its work the inter-State conference will require a permanent secretariat. The general secretary should be appointed by the great Powers, if possible choosing a national of some other country.

3. *International Bodies.*—The Secretariat would be the responsible channel of communication between the interstate conference and all international bodies functioning under treaties guaranteed by the League. These would fall into three classes:

(*a*) Judicial; *i.e.* the existing Hague organization with any additions or modifications made by the League.

(*b*) International administrative bodies. Such as the suggested transit commission. To these would be added bodies already formed under existing treaties (which are very numerous and deal with very important interests, *e.g.* postal union, international labour office, etc.).

(*c*) International commissions of enquiry: *e.g.* commission on industrial conditions (labour legislation), African commission, armaments commission.

4. In addition to the above arrangements guaranteed by or arising out of the general treaty, there would probably be a periodical congress of delegates of the Parliaments of the States belonging to the League, as a development out of the existing Interparliamentary Union. A regular staple of discussion for this body would be afforded by the reports of the interstate conference and of the different international bodies. The congress would thus cover the ground that is at present occupied by the periodical Hague Conference and also the ground claimed by the Socialist International.

For the efficient conduct of all these activities it is essential that there should be a permanent central meeting-place, where the officials and officers of the League would enjoy the privileges of extra-territoriality. Geneva is suggested as the most suitable place.

II. Prevention of War

The covenants for the prevention of war which would be embodied in the general treaty would be as follows:

(1) The members of the League would bind themselves not to go to war until they had submitted the questions at issue to an international conference or an arbitral court, and until the conference or court had issued a report or handed down an award.

(2) The members of the League would bind themselves not to go to war with any member of the League complying with the award of a court or with the report of a conference. For the purpose of this clause, the report of the Conference must be unanimous, excluding the litigants.

(3) The members of the League would undertake to regard themselves, as *ipso facto*, at war with any one of them acting contrary to the above covenants and to take, jointly and severally, appropriate military, economic, and other measures against the recalcitrant State.

(4) The members of the League would bind themselves to take similar action, in the sense of the above clause, against any State not being a member of the League which is involved in a dispute with a member of the League and which does not agree to adopt the procedure obligatory on members of the League. (This is a stronger provision than that proposed in the Phillimore Report.)

The above covenants mark an advance upon the practice of international relations previous to the war in two respects: (1) In insuring a necessary period of delay before war can break out (except between two States which are neither of them members of the League); (2) In securing public discussion and probably a public report upon matters in dispute.

It should be observed that even in cases where the conference report is not unanimous, and therefore in no sense binding, a majority report may be issued and that this would be likely to carry weight with the public opinion of the States in the League.

APPENDIX G

PROPOSALS MADE BY GENERAL SMUTS FOR A LEAGUE OF NATIONS

(President Wilson revised his draft Covenant after careful consideration of the proposals made by General Smuts)

LEAGUE OF NATIONS

A

1. THAT in the vast multiplicity of territorial, economic, and other problems with which the Conference will find itself confronted, it should look upon the setting-up of a League of Nations as its primary and basic task, and as supplying the necessary organ by means of which most of those problems can find their only stable solution. Indeed, the Conference should look upon itself as the first or preliminary meeting of the League, intended to work out its organization, functions, and programme.

2. That, so far at any rate as the peoples and territories formerly belonging to Russia, Austria-Hungary, and Turkey are concerned, the League of Nations should be considered as the reversionary in the most general sense, and as clothed with the right of ultimate disposal in accordance with certain fundamental principles. The reversion to the League of Nations should be substituted for any policy of national annexation.

3. These principles are: firstly, that there shall be no annexation of any of these territories to any of the victorious States, and secondly, that in the future government of these territories and peoples the rule of self-determination, or the consent of the governed to their form of government, shall be fairly and reasonably applied.

4. That any authority, control, or administration which may be necessary in respect of these territories and peoples, other than their own self-determined autonomy, shall be the

exclusive function of and shall be vested in the League of Nations and exercised by or on behalf of it.

5. That it shall be lawful for the League of Nations to delegate its authority, control, or administration in respect of any people or territory to some other State whom it may appoint as its agent or mandatary, but that, wherever possible, the agent or mandatary so appointed shall be nominated or approved by the autonomous people or territory.

6. That the degree of authority, control, or administration exercised by the mandatary State shall in each case be laid down by the League in a special Act or Charter which shall reserve to it complete power of ultimate control and supervision as well as the right to appeal to it from the territory or people affected against any gross breach of the mandate by the mandatary State.

7. That the mandatary State shall in each case be bound to maintain the policy of the open door or equal economic opportunity for all, and shall form no military forces beyond the standard laid down by the League for purposes of internal police.

8. That no new State arising from the old Empires be recognized or admitted into the League unless on condition that its military forces and armaments shall conform to a standard laid down by the League in respect of it from time to time.

9. That, as the successor to the Empires, the League of Nations will directly and without power of delegation watch over the relations *inter se* of the new independent States arising from the break-up of those Empires, and will regard as a very special task the duty of conciliating and composing differences between them with a view to the maintenance of good order and general peace.

B

10. The constitution of the League will be that of a permanent Conference between the Governments of the constituent States for the purpose of joint international action in certain defined respects, and will not derogate from the independence of those States. It will consist of a General Conference, a Council, and Courts of arbitration and conciliation.

11. The General Conference, in which all constituent States will have equal voting power, will meet periodically to

discuss matters submitted to it by the Council. These matters will be general measures of international law or arrangements or general proposals for the limitation of armaments or securing world peace, or any other general resolutions, the discussion of which by the Conference is desired by the Council before they are forwarded for the approval of the constituent Governments. Any resolutions passed by the Conference will have the effect of recommendations to the national Governments and Parliaments.

12. The Council will be the executive committee of the League, and will consist of the Prime Ministers or Foreign Secretaries or other authoritative representatives of the Great Powers, together with representatives drawn in rotation from two panels of the middle Powers and the minor States respectively, in such a way that the Great Powers have a bare majority. A minority of three or more can veto any action or resolution of the Council.

13. The Council will meet periodically and will, in addition, hold an annual meeting of Prime Ministers or Foreign Secretaries for a general interchange of views and for a review of the general policies of the League. It will appoint a permanent secretariat and staff, and will appoint joint committees for the study and co-ordination of the international questions with which the Council deals, or questions likely to lead to international disputes. It will also take the necessary steps for keeping up proper liaison, not only with the Foreign Offices of the constituent Governments, but also with the mandataries acting on behalf of the League in various parts of the world.

14. Its functions will be:

(*a*) To take executive action or control in regard to the matters set forth in Section A or under any international arrangements or conventions;

(*b*) To administer and control any property of an international character, such as international waterways, rivers, straits, railways, fortifications, air stations, etc.

(*c*) To formulate for the approval of the Governments general measures of international law, or arrangements for limitation of armaments or promotion of world-peace.

(Its remaining functions in regard to world-peace are dealt with in the following Section C.)

C

15. That all the States represented at the Peace Conference shall agree to the abolition of conscription or compulsory military service; and that their future defence forces shall consist of militia or volunteers, whose numbers and training shall after expert enquiry be fixed by the Council of the League.

16. That while the limitation of armaments in the general sense is impracticable, the Council of the League shall determine what direct military equipment and armament is fair and reasonable in respect of the scale of forces laid down under (15); and that the limits fixed by the Council shall not be exceeded without its permission.

17. That all factories for the production of direct weapons of war shall be nationalized and their production shall be subject to the inspection of the officers of the Council; and that the Council shall be furnished periodically with returns of imports and exports of munitions of war into or from the territories of its members, and as far as possible into or from other countries.

18. That the Peace Treaty shall provide that the members of the League bind themselves jointly and severally not to go to war with one another:

(*a*) Without previously submitting the matter in dispute to arbitration or enquiry by the Council of the League; and

(*b*) Until there has been an award or a report by the Council; and

(*c*) Not even then, as against a member which complies with the award or recommendation (if any) made by the Council in its report.

19. That the Peace Treaty shall provide that if any member of the League breaks its covenant under paragraph (18), it shall *ipso facto* become at war with all the other members of the League, which shall subject it to complete economic and financial boycott, including the severance of all trade and financial relations and the prohibition of all intercourse between their subjects and the subjects of the covenant-breaking State, and the prevention, as far as possible, of the subjects of the covenant-breaking State from having any commercial or financial intercourse with the subjects of any other State, whether a member of the League or not.

While all the members of the League are obliged to take the above measures, it is left to the Council to decide what effective naval or military force the members shall contribute, and, if advisable, to absolve the smaller members of the League from making such contribution.

The covenant-breaking State shall, after the restoration of peace, be subject to perpetual disarmament and to the peaceful régime established for new States under paragraph (8).

20. That the Peace Treaty shall further provide that if a dispute should arise between any members of the League as to the interpretation of a treaty, or as to any question of international law, or as to any fact which if established would constitute a breach of any international obligation, or as to any damage alleged and the nature and measure of the reparation to be made thereto, and if such dispute cannot be settled by negotiation, the members bind themselves to submit the dispute to arbitration and to carry out any award or decision which may be rendered.

21. That if on any ground it proves impracticable to refer such dispute to arbitration, either party to the dispute may apply to the Council to take the matter of the dispute into consideration. The Council shall give notice of the application to the other party and make the necessary arrangements for the hearing of the dispute. The Council shall ascertain the facts with regard to the dispute and make recommendations based on the merits and calculated to secure a just and lasting settlement. Other members of the League shall place at the disposal of the Council all information in their possession which bears on the dispute. The Council shall do its utmost by mediation and conciliation to induce the disputants to agree to a peaceful settlement. The recommendations shall be addressed to the disputants and shall not have the force of decisions. If either party threatens to go to war in spite of the recommendations, the Council shall publish its recommendations. If the Council fails to arrive at recommendations, both the majority and the minority on the Council may publish statements of the respective recommendations they favour, and such publications shall not be regarded as an unfriendly act by either of the disputants.

APPENDIX H

DRAFT ADOPTED BY THE FRENCH MINISTERIAL COMMISSION FOR THE LEAGUE OF NATIONS

(Translation)

I. Statement of the Principles to be taken as Basis of the League of Nations

The problem of the League of Nations is one which forces itself upon the consideration of every Government. Historically, the idea is a very old one, which took shape when the civilized States assembled at the two Hague Conferences in 1899 and 1907. Practically, during the present war, it has been taken up afresh under various forms by the Allied Governments in their official declarations, by President Wilson in his note of December 1916, and even by our enemies in their replies to the Papal Note of the 16th August 1917. It is, therefore, impossible to avoid the study of the question; it can and must be considered quite apart from the questions which form the subject proper of the Treaty of Peace.

1. In declaring that a sense of justice and honour compelled them to carry on the war thrust upon them by the aggressive action of the Central Powers until a joint and decisive victory had been gained, the Allies intend to convey that one of the results of that victory should be (*a*) to protect the world in future against any recurrence of the employment of brute force and attempts on the part of any nation to obtain universal supremacy, and (*b*) to establish the reign of justice on sure foundations throughout the world.

They declare that, in order to secure conditions which will exclude the existence of a mere dangerous truce and guarantee real peace, it is necessary to provide for the contractual and permanent organization of international relations, by the constitution between States of the association to which universal public opinion has given the name of " the League of Nations".

2. The object of the League of Nations shall not be to establish an international political State. It shall merely aim at the maintenance of peace by substituting Right for Might as the arbiter of disputes. It will thus guarantee to all States alike, whether small or great, the exercise of their sovereignty.

3. The scope of the League of Nations is universal, but, by its very nature, it can only extend to those nations which will give each other all necessary guarantees of a practical and legal nature, and which, in loyal fulfilment of their given word, solemnly undertake to be bound by certain rules in order to maintain peace by respecting Right, and to guarantee the free development of their national life.

Consequently, no nations can be admitted to the League other than those which are constituted as States and provided with representative institutions such as will permit their being themselves considered responsible for the acts of their own Governments.

4. The League of Nations shall be represented by an international body, composed of the responsible heads of Governments or of their delegates.

This international body shall have the following powers:

(1) It shall organize an international tribunal.

(2) It shall effect the amicable settlement of disputes between the States members of the League by means of mediation, preceded, if necessary, by an enquiry in the terms of The Hague Convention of 1907.

(3) In the event of an amicable settlement proving impossible, it will refer the matter to the International Tribunal, if the question at issue is open to a legal decision; otherwise it shall itself decide the matter.

(4) It shall enforce the execution of its decisions and those of the International Tribunal; at its demand every nation shall be bound, in agreement with the other nations, to exert its economic, naval, and military power against any recalcitrant nation.

(5) Every nation shall likewise be bound, at the demand of the International Body, to exert, in common accord with the other nations, its economic, naval, and military power against any nation which, not having become a member of the League of Nations, shall attempt, by any means whatsoever, to impose its will on another nation.

5. The International Tribunal shall pronounce on all questions submitted to it, either by the International Body or by a State having any dispute with another.

It shall decide and pronounce upon questions of law at issue between States, on the basis of custom or of international conventions, as well as of theory and jurisprudence.

In cases of violation of such law, it shall order the necessary reparation and sanctions.

II. Diplomatic, Legal, and Economic Sections

(1) *Diplomatic Sanctions*

These sanctions, the result of which will be to place the delinquent State for a shorter or longer period under the ban of the member nations, fall under three headings:

(*a*) The suspension or breaking off of the diplomatic relations existing up to that period between such State and other member States of the League of Nations;

(*b*) The withdrawal of the *exequatur* granted to the Consuls of such State;

(*c*) The exclusion of the State in question from the benefit of any international conventions to which it may be a party.

(2) *Legal Sanctions*

On the other hand, certain sanctions of a legal nature will enable the League of Nations, according to circumstances, to enforce respect of the principles which it is called upon to protect.

(*a*) Thus offences committed, encouraged, or tolerated by one of the member States may render it liable to pecuniary sanctions which will be applied to it by the International Court of Justice, in accordance with the general principle laid down by Article 3 of The Hague Convention of the 18th October 1907, as to the laws and customs of war.

(*b*) There are, moreover, other sanctions of a legal nature which, without entailing the direct pecuniary responsibility of the State concerned, will exert a very marked and immediate influence on the attitude and decisions

> of its representatives, by reason of the sacrifices it will impose on the private interests of the citizens themselves. There will be no question of depriving the latter of the advantages of common law, or of punishing them for acts for which they are not directly answerable; but that national unity which confers responsibilities as well as benefits, will doubtless permit of the temporary withdrawal from them of the exercise of a faculty which, although not indispensable to existence, nevertheless tends to facilitate it.

The following may be instanced as particularly efficacious measures from this point of view: the suspension, as regards subjects of the recalcitrant State, of all Articles of Association, conventions relating to the protection of authors' copyright and of industrial property, and conventions under private international law concluded between that State and the other States, members of the League of Nations; the exclusion of nationals of the recalcitrant State from recourse to the Courts of Law in the countries members of the League; the refusal to grant the *exequatur* in the said countries as to the execution of judgments pronounced by its Courts in favour of the nationals; the seizure and sequestration of real estate or movable property belonging to its nationals in the said countries; the prohibition of commercial relations, and even, if necessary, of any agreement of a private nature with subjects of the States belonging to the League of Nations.

The foregoing to be without prejudice to any legal sanctions applicable under the ordinary rules of criminal jurisdiction to the individual whose outrages upon law or whose actions may have endangered the maintenance of peace, or to the subsidiary measures which the League of Nations may think well to take in order to secure conviction, in case it is not ensured by the Government to the jurisdiction of which the criminal is subject.

(3) *Economic Sanctions*

Other sanctions of an economic nature can be employed by the League of Nations, by which it will be enabled to exercise an efficient control over the recalcitrant State, by various measures which may extend to placing it under an absolute commercial, industrial, or financial ban.

The principal measures in question are:

(*a*) *Blockade*, consisting in the prevention by force of any commercial intercourse with the territory of the State in question.

(*b*) *Embargo*, *i.e.* the seizure and temporary sequestration, in the ports and territorial waters of the member States, of ships and cargoes belonging to the delinquent State and its nationals, as also the seizures of all goods destined for such State.

(*c*) Prohibition of the supply of raw materials and foodstuffs indispensable to its economic existence.

(*d*) Prohibition of the issue by such State of public loans in the territories of the member States; refusal to allow stock issued elsewhere to be quoted on the official Exchange, and even withdrawal of any previous permission for the quotation of the stock of such State.

The sanctions thus provided will be all the more efficacious and their application will be all the more prompt, in that the member States will have previously arranged to protect themselves against any reprisals to their prejudice, by means of an economic organization adapted to facilitate their co-operation and mutual assistance.

This rough outline will show that the League of Nations will not be without weapons with which to enforce its decisions, and to impose on any disturbing elements that "Peace by Justice", the maintenance of which will be its *raison d'être*.

III. Military Sanctions

(*i.*) *International Forces*

The execution of the military sanctions on land or at sea shall be entrusted either to an international force, or to one or more Powers members of the League of Nations, to whom a mandate in that behalf shall have been given.

The International Body shall have at its disposal a military force supplied by the various member States of sufficient strength:

(1) To secure the execution of its decisions and those of the International Tribunal;

(2) To overcome, in case of need, any forces which may be opposed to the League of Nations in the event of armed conflict.

(ii.) *Strength of International Contingents*

The International Body shall determine the strength of the international force and fix the contingents which must be held at its disposal.

Each of the member States shall be free to settle as it deems best the conditions under which its contingent shall be recruited.

The question of the limitation of armaments in each of the member States will be dealt with elsewhere.

(iii.) *Permanent Staff*

A permanent international Staff shall investigate all military questions affecting the League of Nations. Each State shall appoint the officer or officers who shall represent it, in a proportion to be determined later.

The Chief and Deputy Chiefs of Staff shall be appointed for a period of three years by the International Body, from a list submitted by the member States.

(iv.) *Functions of the Permanent Staff*

It shall be the duty of the permanent international Staff to deal, under the supervision of the International Body, with everything relating to the organization of the joint forces and the eventual conduct of military operations. It will in particular be charged with the task of inspecting international forces and armaments in agreement with the military authorities of each State, and of proposing any improvements it may deem necessary, either in the international military organization or in the constitution, composition, and methods of recruiting of the forces of each State.

The Staff shall report the result of its inspections, either as a matter of routine or at the request of the International Body. Military instruction shall be given in each member State in accordance with rules designed to procure, as far as possible, uniformity in the armaments and training of the troops destined to act in concert.

The International Body shall be entitled, at any time, to require that the member States introduce any alteration into their national system of recruiting which the Staff may report to be necessary.

(v.) *Commander-in-Chief and Chief of General Staff*

When circumstances shall so require, the International Body shall appoint, for the duration of the operations to be undertaken, a Commander-in-Chief of the international forces.

Upon his appointment, the Commander-in-Chief shall nominate his Chief of General Staff and the officers who are to assist him.

The powers of the Commander-in-Chief and his Chief of General Staff shall cease when circumstances become such that an armed conflict is no longer to be feared, or when the object of the military operations has been attained.

In either case, the date at which the powers of the Commander-in-Chief and the General Staff shall cease shall be fixed by a decision of the International Body.

IV. Scope and Functions of the International Body

Public opinion among civilized nations, which regards The Hague Conferences as a step towards the recognition and application of the principles of justice and equity as guarantees of the security of States and the well-being of their peoples, is unanimously demanding a fresh effort in the same direction. Although it has seen arbitration applied in cases of ever-increasing importance, and likewise the creation of an international judicial organization and the institution of a system of enquiry and mediation, it still considers as indispensable the establishment of more concrete guarantees, in order that peace may be secured by the reign of organized justice.

The question thus arises of the institution of a permanent International Body to carry into effect the real aims of the League of Nations.

There is no question of making the League of Nations a super-State, or even a Confederation. Any such idea is rendered impossible by respect for the sovereignty of States, by the diversity of national traditions and of political and judicial standards, by the differences in systems of administration and opposition of economic interests; but public opinion among the free nations would be disappointed if the result of the present crisis were not to be the institution of an International Body capable of

contributing, by constant vigilance and the exercise of sufficient authority, to the maintenance of peace.

In conformity with the statement of principles adopted by the Commission on the 18th January, this body, constituted in the form of an International Council, will derive its authority from the reciprocal undertaking given by each of the member nations to use its economic, naval, and military power in conjunction with the other members of the League against any nation contravening the Covenant of the League.

(i.) *Maintenance of Peace between the Member Nations*

The Council shall devise and apply all means for the prevention of international disputes.

To this intent—

1. The International Council shall maintain and develop the international legal institutions created at The Hague and call for international decisions to supplement them as may be required.

2. The International Council shall, either at the demand of the parties or at the instance of a third State, effect an amicable settlement of differences menacing peace between the member States; in default of any such demand, it shall be bound to take the initiative as regards such settlement.

3. It shall, in the first place, proceed either by means of good offices and of mediation (preceded, if necessary, by an enquiry in the terms of the First Hague Convention of 1907), or by reminding the disputant States that the permanent Court is open to them.

4. Should no amicable settlement be thus obtained, the International Council shall consider whether the question is of a legal nature, in which case, it shall order the disputant States to submit their difference to the Court of International Jurisdiction, which is competent to deal with the matter in the terms of Section IV. of the First Hague Convention; in default of a compromise being effected by agreement between the parties, the Court of The Hague shall be competent to draw up such compromise by extension of Article 53 of the said Convention.

5. The International Council shall ensure the execution of the decisions of the International Court, if necessary, by resorting to the application of diplomatic, legal, economic, and military sanctions.

6. Should the International Council consider that the matter is not of a nature to be finally settled by a legal decision, it shall deal with the question direct.

It shall in the first instance attempt to promote an amicable settlement, and, should it not itself be successful in so doing, it shall define the terms according to which the dispute shall be settled in a manner which shall respect the rights of each State and the maintenance of peace.

This decision shall be notified to the States concerned, it being intimated to them that as from such date no dispute exists between the contestant States, but between the entirety of the member States and the State which, by refusing to accept such decision, violates the very principles of the League. Should the State concerned refuse to accept the decision after having been summoned to do so, the International Council shall notify to it the coercive measures of a diplomatic, legal, economic, or military nature to be taken against it within a specified time.

(ii.) *Defence against Non-Member States*

Should a non-member State attempt to impose its will on any member State upon any pretext whatsoever, the International Council shall, after having employed all possible means of conciliation, decide upon the steps to be taken and shall cause all legal, diplomatic, and military action at the disposal of member States to be employed against such State.

(iii.) *Precautionary Measures against the Spread of any Conflict between Non-Member States*

Should conflict threaten to break out between two nations who are not members of the League of Nations, the International Council shall be bound to prevent any risk of its extension in such a manner as to concern member States, and to use all means in its power to arrive at a peaceful settlement.

V. Composition of the International Council and of the Permanent Delegation

The International Council representing all the nations subscribing to the Covenant for securing peace by organized legislation shall be constituted as follows:

1. Each member State shall be represented by the head of its Government, or by a representative of such Government having sufficient power to bind the liability of his State.

2. A plenary meeting of the International Council alone shall be empowered to decide questions coming within its jurisdiction. It shall make known the rulings given in the case of disputes between States, and, should any such State refuse to accept the ruling, it shall cause the (corresponding) sanctions to be carried into effect by the Governments of the member States.

3. The International Council shall hold its ordinary meeting once a year. The date and place of the following meetings shall be settled at each such meeting.

4. The members of the International Council shall agree *inter se* concerning the appointment of members of the Permanent Delegation which shall, between the meetings, receive all communications destined for the said Council, prepare its reports, etc., keep its archives in safe custody, and, in case of emergency, send out notices to members of the Council and propose the calling of a special meeting.

5. The Permanent Delegation shall consist of 15 members. Their term of office shall be —— years, and they shall be eligible for re-election.

6. The International Council shall define the powers of its Permanent Delegation.

7. The International Council shall call an extraordinary meeting at the suggestion of the Permanent Delegation (see paragraph 4 hereof), or at the request of one or more of the member States.

June 8, 1918.

APPENDIX I

DRAFT SCHEME FOR THE CONSTITUTION OF THE LEAGUE OF NATIONS

(Submitted by the Italian Delegation)

(Translation)

THE President of the United States of America, the President of the French Republic, His Majesty the King of Great Britain and Ireland, His Majesty the King of Italy, and His Majesty the Emperor of Japan, animated by a common desire to secure a stable peace and friendly co-operation between all States, to enforce a more rigorous observance of justice and equity between them, and to provide the best means of promoting their common interests, duly invite all those States taking part in the Conference assembled in Paris, in January 1919, to form themselves for the above purposes into a "Society of Nations".

The five above-named States, and all those accepting this invitation, holding it to be necessary, for the purpose in view, to establish a legal basis of international relations, guaranteeing to every free State the necessary conditions of its independent and autonomous development, and to determine the means by which each, in proportion to its resources, is to contribute to the well-being and progress of civilization, solemnly declare their sincere and unshakable intention of regulating their conduct according to the following fundamental principles:

1. Every State is equal before the law. Inequalities of power cannot be invoked in justification of any act of commission or omission, or of any claim or pretension incompatible with the respect due to the rights of others and with the fulfilment of international duties.

   The more progressive States are under the obligation of lending their assistance, under the supervision

of the Society of Nations, towards the proper government of countries which have not yet reached a stage of ordered civilization, with the object of promoting the progress of such countries.

2. Every action or attempted action constituting a curtailment of or menace to the political independence or territorial integrity of a State contradicts the principles by which international solidarity can alone be assured.
3. Every State has the right to participate in international commerce and traffic in conditions of legal equality. This freedom or equality shall, however, not be affected by any restrictions, such as customs and sanitary regulations, which a State in its own interest may require to impose.
4. Navigation of the seas is free to merchant ships of every flag. Sovereign rights over territorial waters and ports cannot be exercised in such a way as to prejudice substantially such freedom of navigation.
5. The international distribution of the foodstuffs and raw materials required to sustain healthy conditions of life and industry must be controlled in such a way as to secure to every country whatever is indispensable to it in this respect.
6. All laws and regulations intended to protect the rights and interests of work-people shall be applied in every country without distinction of nationality. This principle, however, is not to be considered as interfering with the right of a State to limit the following by foreigners of particular professions and the employment of foreign labour in certain kinds of work.
7. No State can release itself from the obligations assumed, by entering into any international treaty outside the scope hereof, except by the consent of all the parties concerned or by recourse to bodies competent to solve disputes arising from such independent action.
8. Secret international treaties are prohibited.

The contracting States further undertake to guarantee in their mutual relations the observance of these principles, with the object of safeguarding and promoting their common interests, through:

(*a*) The constitution and working of certain international bodies duly designed to fulfil the various objects in view;

(*b*) The formulation of a special procedure to prevent and solve all disputes which may arise between them; and

(*c*) The sanction of certain coercive measures for the repression of any action in violation of the agreements here or hereafter entered into in accordance with the above principles.

With the object of putting the above conception into immediate practice, in so far as present conditions permit, the Contracting States hereby agree as follows:

General Provisions

Article 1. The Contracting States undertake:

(*a*) To solve all disputes arising between them in accordance with the methods laid down in this Convention;

(*b*) To respect and execute in good faith all decisions arrived at through the same procedure;

(*c*) To abstain from every coercive act, one against the other, except as provided for in Section IV. of this Convention.

The Contracting States accordingly undertake to reduce their armed forces of every kind within whatever limits are decreed necessary according to the provisions which shall hereafter be established in a special protocol.

Article 2. All treaties entered into by the present or any future signatories hereof, which are contrary to the principles laid down in the preamble or to the rules contained in the following Articles of the Convention, shall be considered null and void.

The abrogation of such treaties shall be decided at the request of any party interested in the manner laid down in Section II. of this Convention.

Section I

Regulation and Administration of Matters of Common Interest

Article 3. The representatives of all the Contracting States shall meet in Conference periodically in the city of —— for

the purpose of formulating and developing the principles of international law, and of examining and discussing matters of common interest.

At the conclusion of each Conference the date of its next meeting shall be fixed.

Article 4. Every State shall have one vote only in the meetings of the Conference, but may be represented by Delegates up to the number of three.

Proposals passed by a majority of not less than two-thirds of the States voting shall be considered adopted in all cases except those otherwise provided for by this Convention.

Article 5. A Council, composed of a representative of each of the five Great Powers mentioned in the preamble as promoters of the scheme and of four representatives of the other Contracting States, nominated by each successive Conference, together with an equal number of supplementary members chosen by the same methods as deputies for any representatives prevented from attending, shall meet at least once a year, or whenever circumstances demand it, to deal with matters of common interest or requiring immediate action.

The Council shall elect from among its members a Chairman and a Vice-Chairman by secret ballot and by a majority vote. In the event of an equal number of votes being cast after a second ballot, the oldest candidate shall be accounted elected.

Article 6. There shall be appointed, at the discretion of the Council, a permanent Secretariat, with its offices at ——. Its duties shall be to prepare and co-ordinate the business of the Conferences, to record all decisions, and to deal with the documents concerned.

Article 7. There shall be established under the direction of the Council, and in the form which the latter shall deem most suitable, an Economic Commission, a Labour Commission, and a Military Commission.

The Economic Commission shall procure and furnish data for the solution of international problems of an economic and financial character, in such a way as to facilitate the progressive and harmonious co-ordination of the interests of every country in this field.

The Labour Commission shall collect materials and formulate proposals for the protection of work-people, and for the solution of international problems affecting them; and it shall

give its opinion on all international controversies that may arise as to the interpretation and application of treaties relating to international labour legislation.

The Military Commission shall collect materials and formulate proposals for the solution of the various military problems confronting the Society of Nations.

Article 8. All international Unions, Institutions, and Departments, already constituted for the purpose of safeguarding or administering certain matters of common interest, shall form part of the general constitution of the Society of Nations, and shall conform to the principles and regulations established by this Convention.

As far as they regard those States not party to the Constitution, no changes shall be made.

Article 9. Whenever international interests demand it, new international bodies shall be formed, according to the principles laid down in the preamble of this Convention, either by agreement of all the members of the Society of Nations or of some of them.

Section II

Solution of International Disputes

Subsection I.—*Court of Enquiry and Conciliation*

Article 10. Any dispute arising between any of the Contracting Parties, which cannot be solved by amicable negotiations, must automatically be settled by arbitration. If the parties concerned cannot agree on the choice of an Arbitrator to whose judgment they are prepared to submit, the matter shall be referred, at the request of either party, to the Council mentioned in Article 5, which, with the addition of a representative of each of the parties in dispute (in the event of the parties not being already represented), shall proceed to deal with the question in the capacity of a Court of Enquiry and Conciliation.

Article 11. The representatives on the Council at the time when the latter is charged with the duty of settling a dispute shall remain at their posts until their duties in this respect have been discharged, even if in the meantime the term of their appointment comes to an end and they are not confirmed in their appointment.

The office of Chairman of the Council cannot be held by the representative of one of the States party to the dispute. In the event of this being the case, the Chairman shall be replaced by the Vice-Chairman, and the latter by the senior member of Council or by the oldest member present wherever seniority is equal.

Article 12. The State making appeal to the Council shall forward to the same a Petition, containing a full account of the dispute and of its own demands.

On the receipt of the Petition, the Council shall inform the other State or States party to the dispute, and shall assign to them a suitable time-limit in which to put forward their case.

Article 13. The Council shall make every effort to bring about an amicable settlement of the dispute. But in the event of such effort failing, or if it considers it otherwise advisable, the Council shall come to a decision on the matter at issue forthwith, according to the provisions of the following article.

Article 14. If the dispute has been submitted to the Council by one only of the parties, and the other has either not approached it on the matter or considers that the dispute should be decided by a legal judgment, the Council shall examine the nature of the question, and if, in its opinion, either by reason of its intrinsic character or of the existence of previous agreements which there is no reason to set aside, the matter is one which should properly be solved according to the principles of international law rather than on grounds of equity or political expediency, it shall refer the question to the Court of International Justice.

In all other cases the Council shall decide on the merits of the case, unless it prefers to refer the dispute in question, either on account of its nature, its importance, or on account of the attending circumstances, to the Conference mentioned in Article 3.

Article 15. Both the Conference and the Council shall control their own procedure. They shall have the authority to nominate Commissions of Enquiry to collect evidence and to procure the production of all documents relating to the case at issue, with due regard to the interests of the States involved.

The Contracting States bind themselves to produce all such documents required.

Article 16. The Conference and the Council shall formu-

late their decisions on the grounds of equity and political expediency, with the object of securing a just and stable arrangement as between the parties in dispute.

Article 17. Any solution of a dispute adopted by two-thirds of the Conference or of the Council shall be binding on the parties concerned. The minority shall in any case be accorded the right to draw up its own reasoned finding and to publish it together with the finding of the majority.

Failing a two-thirds majority, the opinion of the majority shall have the weight of a simple recommendation. In this case the dispute may be referred by the Council to the Conference, or by the Conference to a subsequent Conference.

Subsection II.—*Court of International Justice*

Article 18. There shall be established at The Hague an International Court of Justice composed of judges appointed by all the Contracting States. Each State shall appoint one judge for six years, with the right of renewing the appointment.

Article 19. The Court shall elect from among its own members, every two years, a President and a Vice-President by secret ballot and by a majority vote. In the event of an equal number of votes being cast after a second ballot, the oldest candidate shall be accounted elected.

Article 20. The body known as the "Permanent Court of Arbitration" established by The Hague Convention of the 29th July 1889, with the object of securing a peaceful solution of international disputes, shall serve as Chancery to the Court of International Justice.

Article 21. The Court shall form itself into Panels to deal with each case brought before it.

A Panel shall consist of:

1. The President of the Court, or, in the event of his being disqualified, the Vice-President.
2. One Judge chosen from among the members of the Court by each of the parties concerned in the dispute.
3. Four or five Judges—whichever number will bring the total of those serving on the Panel to an odd number—chosen from among the members of the Court by secret ballot.

Each member shall vote for two names, and those Judges

shall be elected who receive the greater number of votes. The oldest among the candidates shall be accounted elected, whenever the voting is equal.

In the event of one of the parties to the dispute not nominating a Judge of its own, the Court shall elect by secret ballot an additional member to the Panel.

Article 22. The Court of International Justice shall hear:

(*a*) All cases submitted to it by formal compromise between the parties to the dispute.

(*b*) Cases referred to it by the Council and brought forward by one of the parties only, as laid down in Article 14; in such cases compromise shall not be necessary.

Article 23. If the dispute is referred to the Court by formal compromise, such compromise shall mention the name of the Judge chosen by each party. The President shall thereupon immediately convene the Court, which shall proceed to the election of the remaining members of the Panel according to the provisions of the foregoing Article.

If, on the contrary, the dispute has been referred to the Court at the request of one party only, the name of the Judge chosen by that party shall be specified. The President shall thereupon notify the fact to the other party and shall invite it to nominate a Judge within a period in no circumstances exceeding thirty days. On the receipt of a nomination, or at the expiration of the said period, the President shall convene the Court, which shall proceed to the election of the members of the Panel which is to try the case.

Article 24. The Panel cannot be altered during the course of the trial. In the event of a Judge's non-attendance, he shall be replaced by another chosen by the parties or elected by the Court in the same manner as his predecessor. Such a vacancy must be filled in the shortest possible time, and in any case within a period not exceeding thirty days.

Article 25. When the instrument of compromise contains no reference as to procedure, the Panel shall make whatever regulations it thinks fit, or shall observe those laid down by The Hague Convention of the 18th October 1907, for the amicable settlement of international disputes in so far as they are applicable.

The work of cross-examination may be allocated to one or more of the Panel's members.

Article 26. The Contracting States bind themselves to give every facility to the Court of International Justice to procure the production of whatever documents or any other evidence may be required, in accordance with the formalities governing domestic relations.

Section III

Sanctions

Article 27. When a State does not conform to an obligatory decision of the Conference or of the Council, as laid down in Article 17, or of the International Court of Justice, the Council shall invite it to do so, and may prescribe a period within which it must do so.

Article 28. If within this period the State in question fails to carry out this decision, the Council shall decide what measures shall be taken to induce its submission, and shall thereupon notify all the Contracting States of the measures decided on, requesting that they should be immediately put into practice. The Contracting States shall be bound to comply with the request, and to do all in their power to ensure the execution thereof in the most efficacious manner possible.

Refusal to obey, or delay or insufficient zeal in carrying out the measures prescribed, shall expose the recalcitrant State to the censure of the Council, which may accordingly take against it one or more of the courses of action indicated below.

Article 29. The following is a list of the most important of the sanctions recommended:

(*a*) Rupture of diplomatic relations with the recalcitrant State.

(*b*) Withdrawal of the *exequatur* conceded to the recalcitrant State's consular agents.

(*c*) Suspension of the treaty rights of the recalcitrant State.

(*d*) Imposition of a pecuniary indemnity or other form of fine on the recalcitrant State.

(*e*) Sequestration of property, whether real or otherwise, of the recalcitrant State, situate or being in the territory of the States loyal to the Convention, and the refusal of all credits to the former.

(*f*) Police supervision or expulsion of the subjects of the

recalcitrant State. Prohibition to the same to enter into or to take up their residence within the territories of the loyal States. Restrictions on the economic and legal rights of the same.

(*g*) Closing of ports to the ships of the recalcitrant State, and the withholding from the latter of raw materials and other necessaries.

(*h*) Prohibition of all official quotations of the Government stocks of the recalcitrant State.

(*i*) Economic and commercial boycott, partial or total.

(*j*) Embargo on all ships or cargoes belonging to the recalcitrant State or its subjects; and on goods destined for the said State in the ports and territorial waters of the loyal State.

(*k*) Blockade of the recalcitrant State by the naval forces at disposal of the Council.

(*l*) Exclusion of the recalcitrant State from the Society of Nations.

(*m*) Joint war on the recalcitrant State by all the loyal members of the Society of Nations.

The Council may, moreover, take any other coercive measures, direct or indirect, not here enumerated, which appear to it adapted to overcome the resistance of the recalcitrant State.

Article 30. In the event of a recalcitrant State declaring itself ready to submit, the Council may order the revocation of any coercive measures prescribed, subject to due guarantees being furnished that its orders shall henceforth be fulfilled, and that due reparation shall be made by the offender for any damages occasioned by its disobedience in the first instance.

Article 31. If any State, party to a dispute, should violate its obligations under Article 1 not to go to war before the decision of the Conference, Council, or Court has been pronounced, all the other Contracting Parties shall consider themselves in a state of war with the recalcitrant State, and may jointly or severally take whatever measures they may think suitable for the defence of the State attacked.

The Council shall immediately meet and determine what specific measures shall be taken in accordance with Article 28 hereof.

Section IV

Relations with Non-Contracting States

Article 32. In the event of a dispute arising between one of the Contracting States and a Non-Contracting State, and in the event of friendly negotiations or arbitration failing to solve such dispute, the former shall have the right to appeal to the Council to intervene; and, in the event of such intervention failing, to invite the Non-Contracting State to submit the whole question to the decision of the Council.

If the Non-Contracting State accepts this invitation the dispute shall be settled in the manner prescribed above, as if the Non-Contracting State were a Contracting State.

Article 33. If the Non-Contracting State refuses such invitation, or if any act of hostility be committed by it against the Contracting State, the Council, at the request of the latter, shall examine the dispute in question and decide whether and in what conditions and by what specific measures the said State shall be assisted by the remaining Contracting Parties.

Final Provisions

Article 34. Regulations shall be drawn up (*a*) providing for the manner in which expenses attending the constitution and working of the international bodies hereinbefore referred to shall be met; (*b*) defining their rights and privileges; and (*c*) fixing the most effective means of realizing the above provisions.

Article 35. Any State, whose Constitution conforms to the principles set out at the beginning of this Convention, shall have the right to adhere to the same by formally declaring its intention to do so at the office of the Secretariat mentioned in Article 6, which shall immediately notify all parties of such intention. If within six months of such declaration no objection should have been received at the said office to the adherence of the said State, the latter shall be admitted to membership forthwith. If, on the contrary, an objection is raised, the reason for such objection shall be communicated without delay and within the said period of six months to the State in question and to all the parties concerned; and in the event of such objection not being set aside by agreement, the matter shall be

referred to the Council for decision according to the procedure laid down in Section II. of this Convention.

Article 36. Admittance to the Society of Nations implies full and unequivocal acceptance of the provisions and regulations established in this Convention and of any subsequent clauses embodied in it by the Contracting Parties.

Article 37. The number of representatives on the Council, as provided in Article 5, may be increased at any time when the Conference deems such increase expedient, whether by reason of the adherence of a larger number of States to the Society of Nations or for some other reason.

Article 38. Ratifications to this Convention shall be deposited at the office of the Secretariat mentioned in Article 6, which shall notify forthwith all Contracting Parties.

The present Convention shall become effective thirty days after the date on which at least . . . of the Contracting States, including the five Great Powers, have deposited their ratifications. For those Contracting States whose ratifications remain outstanding, this Convention shall become effective thirty days after such ratifications have been duly deposited. Similarly, for those States adhering, according to the provisions laid down in Article 35, this Convention shall become effective thirty days after their admittance to the Society of Nations has become definite.

APPENDIX J

AVANT-PROJET DE CONVENTION RELATIVE À UNE ORGANISATION JURIDIQUE INTERNATIONALE, ÉLABORÉ PAR LES TROIS COMITÉS NOMMÉS PAR LES GOUVERNEMENTS DE SUÈDE, DE DANEMARK ET DE NORVÈGE

A PLUSIEURS reprises au cours de la guerre mondiale, le gouvernement suédois a pris l'initiative de démarches en vue d'unir les pays neutres de l'Europe dans un travail visant la sauvegarde de leurs intérêts communs à la fin de la guerre ou après la paix conclue. Ces efforts n'ont cependant pas abouti.

Lors des entrevues réitérées qui ont eu lieu entre les présidents du conseil et les ministres des affaires étrangères des trois pays scandinaves, les délibérations ont porté, entre autres, sur des questions relatives à la sauvegarde des intérêts communs des États neutres.

En exécution des résolutions prises à celle de ces entrevues qui eut lieu à Christiania en novembre 1917, le gouvernement du Roi nomma, en janvier de l'année passée, une commission chargée d'étudier, en collaboration avec des commissions analogues nommées par les gouvernements danois et norvégien, et en continuation des travaux préliminaires déjà entamés, le problème de la sauvegarde des intérêts communs des États neutres à la fin de la guerre.

Les commissions furent composées de la manière suivante:

Pour la Suède:

MM. le baron E. Marks von Würtemberg, ancien ministre, ancien juge à la Cour Suprême;
le baron Th. Adelswärd, ancien ministre, membre de la seconde chambre du Riksdag;
O. Ewerlöf, ministre de Suède à Vienne.

Pour le Danemark:

MM. les Chambellans H. Zahle et Clan, directeurs au Ministère des Affaires Étrangères;
N. Neergaard, ancien président du conseil, membre du Folketing.

Pour la Norvège:

MM. F. Hagerup, ancien président du conseil, ministre de Norvège à Stockholm;

J. Grieg, consul;

Chr. L. Lange, secrétaire général de l'Union Interparlementaire.

Aux travaux des commissions ont pris part, en outre, comme secrétaire suédois, M. A. Hammarskjöld, secrétaire au Ministère des Affaires Étrangères à Stockholm et, comme délégué technique danois, M. Cohn, chef de section au Ministère des Affaires Étrangères à Copenhague. Pour ces travaux spéciaux, la commission suédoise a eu recours à la collaboration de M^me^. Anna Bugge-Wicksell.

Dans un rapport, daté du 21 décembre passé, la commission suédoise a porté à la connaissance du Ministre des Affaires Étrangères le résultat des travaux des trois commissions scandinaves, qui comprend un avant-projet de convention relative à une organisation juridique internationale.

La présente publication reproduit le texte de cet avant-projet, et, en guise d'exposé des motifs, un extrait du rapport de la commission suédoise.

Stockholm, le 21 janvier 1919.

LE MINISTÈRE DES AFFAIRES ÉTRANGÈRES

EXPOSÉ DES MOTIFS

(Extrait du rapport adressé par la commission suédoise au Ministre des Affaires Étrangères, en date du 21 décembre 1918)

La commission suédoise croit devoir présenter ici quelques considérations sur les dispositions principales de son projet et exposer les principes qui l'ont guidée dans son travail. Elle tient à noter, tout d'abord, que, dans plus d'un cas, elle a estimé devoir retenir, non seulement la solution qui lui semblait la plus recommandable, mais telle autre aussi qui serait également acceptable et qui figure, en regard du texte suivi de son projet, à titre d'alternative. Par contre, l'indication "alternative danoise", qui accompagne quelques-unes de ces variantes, signifie qu'il s'agit de propositions formulées par la commission danoise, mais auxquelles les délégués suédois et norvégiens n'ont pas pu se rallier.

Le projet débute par certaines dispositions relatives à la composition de la ligue d'États dont la fondation s'impose, au jugement de la commission, pour créer l'organisation juridique internationale qu'il s'agit d'instaurer dans le monde (art. 1–4). A cet égard, les trois commissions émettent le vœu que cette ligue comprenne tous les États qui étaient conviés à la deuxième Conférence de la Haye. Estimant, néanmoins, qu'il ne saurait être question d'adhésion obligatoire, elles ont dû rechercher quel serait, sur ce point, le minimum à réaliser pour que le groupement projeté pût se constituer utilement. Et il leur a paru qu'une organisation juridique internationale serait pratiquement sans valeur si la catégorie d'États communément appelés grandes puissances ou tel de ces États restait hors de ses cadres, mais que, ce point réservé, il n'y avait pas lieu de faire de l'adhésion de certaines puissances ou d'un nombre déterminé d'entre elles une condition absolue. Quant à désigner les États dont l'adhésion devait être tenue pour nécessaire, c'est une tâche que les commissions n'ont pas cru pouvoir entreprendre dans l'état actuel des choses. Aussi leur projet laisse-t-il la question ouverte (art. 3).

Pour empêcher que des États peu civilisés ne cherchent à forcer l'entrée de la ligue, deux alternatives ont été indiquées à l'article 4.

Les articles suivants (5–9), munis dans le projet de la rubrique "*obligations générales*", concernent la question fondamentale de l'obligation pour les États membres de la ligue de soumettre les différends qui surviendraient entre eux à une procédure pacifique.

La procédure qui se présente le plus immédiatement à l'esprit est celle du recours à un tribunal, aboutissant à un règlement du conflit obligatoire pour les États en litige. Ce tribunal, on se le représente en général comme une commission d'arbitrage, sur la composition de laquelle les Parties exercent dans chaque cas particulier, une influence plus ou moins considérable, et l'on s'efforce d'amener les États à s'engager, dans la plus grande mesure possible, à soumettre leurs différends futurs à cette procédure d'arbitrage. Des délibérations ont eu lieu dans ce but aux deux Conférences de La Haye, et notamment à la deuxième. Elles tendaient avant tout à trouver une forme de convention d'arbitrage qui pût réunir l'adhésion du plus grand nombre possible d'États. Depuis lors aussi, l'idée

d'une extension de la procédure d'arbitrage continue d'avoir des partisans convaincus et nombreux, dont beaucoup croient avoir trouvé dans l'application sans réserve du principe dont il s'agit le moyen d'abolir la guerre.

Il n'a pas été possible, toutefois, aux commissions de se ranger à cette opinion.

En effet, parmi les questions qui peuvent donner lieu à des conflits entre les États, il en est—et ce sont les plus brûlantes peut-être—d'une nature telle qu'il est peu probable que les États consentent à en faire à l'avance l'objet de conventions d'arbitrage.

Les différends internationaux ne se prêtent pas tous à un règlement judiciaire. Le droit international n'a pas encore atteint un degré de développement suffisant pour qu'il en fût autrement. Au cours des dernières années, et grâce, notamment, aux deux Conférences de La Haye, des progrès importants ont été, il est vrai, réalisés à cet égard, et malgré les expériences peu encourageantes, parfois, faites pendant la guerre en ce qui concerne le respect et l'inviolabilité des principes consacrés en matière de droit international, on peut espérer que la majeure partie des résultats obtenus dans ce domaine resteront acquis, comme il est à prévoir que le droit international va continuer de s'édifier et de se perfectionner. Il n'y a pas à se dissimuler toutefois que, si le droit matériel se trouve aujourd'hui, dans les États civilisés, fixé dans toutes ses parties, ce qui permet, à l'intérieur de chacun de ces États, d'imposer le règlement par la voie judiciaire des conflits qui ne peuvent être résolus autrement, il n'en va pas de même dans le domaine de la vie internationale, où l'on ne parviendra que dans un avenir encore bien éloigné à un ordre de choses peu compatible, d'ailleurs, avec la notion de la souveraineté professée par la plupart des États et que ceux-ci tiendront, sans doute, aussi longtemps que possible à maintenir.

Il convient notamment de ne pas perdre de vue le fait suivant: alors que toute organisation juridique nationale tend à la conservation des droits acquis, cet élément conservateur ne saurait être maintenu au même degré dans le domaine international, où les circonstances exigent plus fréquemment la modification d'une situation donnée. Des questions litigieuses comme celles, devenues actuelles ces derniers temps, de la formation de nouveaux États, des modifications territoriales nécessitées par des

mouvements nationaux, de l'immigration des étrangers, de l'accès aux colonies ou aux territoires sans maître, sont impossibles à résoudre suivant des principes juridiques reconnus. Dans bien des cas, des considérations politiques entrent nécessairement en ligne de compte pour leur solution. Il s'agit, à leur sujet, non de déterminer, d'après des règles d'une valeur générale et permanente, ce qui doit être, mais, en tenant compte des circonstances diverses à considérer, de chercher à concilier des intérêts opposés et d'aboutir à la solution qui pourra être jugée la plus propre, sous le rapport de l'opportunité et de l'équité, parfois aussi de la situation politique générale, à mettre fin au conflit. C'est là une tâche qui réclame du juge ou des juges à qui elle est confiée, une autorité, une largeur de vues et une aptitude à s'affranchir des considérations étroitement nationales assez exceptionnelles. Il est à peine permis d'espérer que, pour la désignation d'arbitres appelés à trancher des questions de cette nature, l'accord désirable puisse se faire entre les parties en litige sur le choix des personnes. Ce choix devra donc être remis à des tiers ou se faire par le sort. Même abstraction faite de cette circonstance, on ne peut guère s'attendre à ce que, d'une manière générale, les États se montrent disposés, dans les questions d'intérêts considérées ici, dont l'importance pour les deux parties en litige est souvent capitale, à prendre l'engagement de recourir à une procédure assez incertaine. On doit se demander même s'il serait sage de tendre à la conclusion, entre un grand nombre d'États, de conventions d'arbitrage exemptes de toute clause restrictive et de s'exposer ainsi à des violations qui ne pourraient qu'être préjudiciables au principe même de l'arbitrage.

Les objections que soulèvent ainsi les conventions d'arbitrage qui ne comportent aucune réserve, ne se justifient sans doute pas également pour tous les États. La question peut fort bien se poser, au contraire, de savoir si la conclusion de tels accords n'offrirait pas des avantages certains aux petits États, qui n'ont qu'une possibilité limitée de faire valoir leur point de vue par les moyens politiques, et surtout à ceux dont, comme c'est le cas pour les pays scandinaves, la situation répond à peu près à leurs aspirations. Ce qui, de l'avis des délégués suédois, ne saurait aboutir et ne serait peut-être même pas très judicieux, ce serait de vouloir arriver à une convention générale de règlement judiciaire des conflits internationaux de toute nature.

Les observations qui précèdent n'empêchent pas, certes, de

juger hautement désirable le recours à cette procédure dans une mesure beaucoup plus considérable que jusqu'à ce jour. Il est à souhaiter, en particulier et avant tout, que les conflits d'ordre proprement juridique, qui ne peuvent être résolus par la voie diplomatique, soient toujours soumis à l'arbitrage et que disparaissent ainsi, lorsqu'il s'agit de questions d'un caractère juridique incontestable,—interprétation de traités et autres du même genre,—les réserves actuellement faites par tant de conventions pour les questions concernant l'honneur, l'indépendance et les intérêts vitaux des États. Il y aurait lieu, en outre, de déterminer dans une convention entre tous les États membres de la ligue, les matières qui devront faire l'objet d'une procédure judiciaire. L'article 9 du projet exprime le sentiment de la commission sur les réalisations désirables en ce qui concerne l'application du principe de l'arbitrage dans la plus large mesure possible et de ses modalités dans une convention générale.

L'exemple de la deuxième Conférence de La Haye montre cependant la difficulté d'arriver à une convention générale en la matière. L'accord s'était fait à cette Conférence, d'une part, sur l'introduction, par le moyen de traités collectifs, de l'arbitrage obligatoire pour tous les litiges d'ordre juridique, et de l'autre sur l'impossibilité de tracer une ligne de démarcation précise entre les différends d'ordre juridique et ceux que l'on qualifiait conflits d'ordre politique. On s'efforça donc de trouver une solution en dressant une liste des questions qui seraient toujours tenues pour être d'ordre juridique et pour lesquelles l'arbitrage serait, par conséquent, obligatoire. Mais l'entente ne parvint pas à se faire sur le contenu de cette liste.

Si des difficultés analogues venaient à surgir à la reprise de la question, il ne resterait d'autre ressource que de recourir à des conventions particulières de règlement judiciaire. En vue de faciliter leur conclusion, il y aurait lieu, semble-t-il, de prendre en considération une proposition présentée à la deuxième Conférence de La Haye. Cette proposition tendait à l'institution d'un protocole ouvert énonçant un grand nombre de matières susceptibles d'un règlement arbitral, et parmi lesquelles chaque État aurait la faculté d'indiquer celles qu'il s'engagerait pour sa part, envers tout autre État disposé à s'imposer la même obligation, à soumettre à l'arbitrage. Les commissions, dans l'article 9 de leur projet, préconisent cet arrangement, qui avait réuni à la Conférence de nombreuses adhésions, et qui leur

paraît à elles-mêmes de nature à faciliter et à favoriser la conclusion de conventions particulières.

Il semble permis d'espérer que, soit en vertu d'une forme quelconque d'accord général, soit en raison de conventions portant sur des cas déterminés, la procédure judiciaire trouvera à l'avenir une application de plus en plus étendue et fréquente. Pour les cas, toutefois, où il serait impossible d'y recourir, il importe d'en trouver une autre, propre à empêcher autant que possible les différends internationaux de donner lieu à des complications et de prendre une tournure menaçante. Celle à laquelle les parties en litige seraient, aux termes du projet, tenues de se soumettre en second lieu, est la procédure dite d'enquête et de conciliation. Les commissions ont adopté à cet égard les principes appliqués dans les traités relatifs à cette procédure que les États-Unis de l'Amérique du Nord ont conclus au cours des années 1913 et suivantes avec un certain nombre de puissances. Ces traités comportent l'obligation pour les États contractants de renvoyer leurs différends à l'examen d'une commission dont la composition est déterminée à l'avance et de n'entreprendre aucune action militaire avant que celle-ci ait déposé son rapport, dont les conclusions n'ont d'ailleurs pour eux aucun caractère obligatoire. Le but visé par ces dispositions n'est pas seulement de chercher, au moyen d'une enquête impartiale, les moyens de résoudre le différend, mais aussi de donner aux esprits, pendant la durée du "moratorium" stipulé pour l'emploi de la force, le temps de se calmer et aux influences conservatrices de la paix celui d'exercer et de faire sentir leur action. Aucune réserve ne paraît ici nécessaire, en ce qui concerne la nature des conflits susceptibles d'être soumis à cette procédure. On est en tout cas fondé à penser que les peuples se trouvent, au terme de la guerre mondiale, dans des dispositions d'esprit qui les inclineront à juger acceptable un arrangement auquel de grandes puissances même avaient cru pouvoir, antérieurement déjà, donner leur adhésion.

La procédure d'enquête et de conciliation deviendrait applicable, par conséquent, à tout conflit qui n'aurait pu être résolu par la voie diplomatique ni faire, aux termes d'un accord, l'objet d'un règlement judiciaire. En cas de divergence d'opinions concernant l'applicabilité à un litige déterminé d'une convention stipulant le renvoi devant un tribunal des différends survenus entre les États contractants—et c'est un cas auquel donnera

toujours aisément lieu la clause restrictive qui soustrait à cette procédure les intérêts vitaux des États—la question du règlement judiciaire du conflit pourrait, sur l'initiative d'une des parties, être abandonnée, et le litige serait soumis à une commission d'enquête et de conciliation. Cette solution, qui obvie à certaines difficultés autrement inévitables, est préconisée dans le projet (art. 7).

A titre d'alternative, celui-ci introduit toutefois une disposition prorogeant le moratorium pendant une période déterminée, dans le cas où cinq puissances au moins s'accordent pour faire une proposition de médiation. Cet arrangement vise à réserver la possibilité—dont l'expérience a démontré la valeur dans les questions particulièrement délicates, de race, par exemple, ou de nationalité—de chercher un dernier moyen de sauvegarder la paix dans l'intervention, d'un caractère plus ou moins politique, d'un groupe plus ou moins important de puissances.

Une autre section du projet (art. 10–39) concerne l'organisation d'une Cour de justice internationale permanente et la règlementation de la procédure à appliquer dans les affaires soumises à son examen.

Jusqu'à présent, les organes auxquels les États pouvaient recourir pour le règlement judiciaire des différends internationaux étaient, au sens propre du terme, des tribunaux d'arbitrage: des commissions sur la composition desquelles les États en litige exerçaient une influence prépondérante et dont les membres se recrutaient en majorité parmi leurs propres ressortissants. L'organisation et la procédure de ces tribunaux ont été déterminées par les deux Conférences de la Haye. On sait que la "Cour permanente d'arbitrage", dont la fondation est l'œuvre de ces Conférences, n'est, en fait, qu'un cercle de personnes désignées par les Puissances pour que, en cas de conflit, les États en litige puissent choisir dans leur sein des arbitres.

De bonne heure, toutefois, l'idée a été émise que les tribunaux d'arbitrage ne pouvaient être considérés comme la seule forme possible de tribunal pour le règlement des différends internationaux. Ces tribunaux devaient, disait-on, par une propension conforme à la nature même des choses, être portés à vouloir réaliser une sorte de médiation entre des intérêts divergents, plutôt qu'à rendre, d'après des principes strictement juridiques, une sentence proprement judiciaire. Pour les conflits de moindre importance, leur procédure apparaissait trop com-

pliquée aussi et trop coûteuse. Et il en est résulté que des questions qui, par ailleurs, se prêtaient à un règlement judiciaire ne l'obtenaient point. On s'est trouvé amené, dès lors, à réclamer l'institution d'un tribunal réellement permanent, composé de juges qui ne fussent pas nommés en vue d'un conflit déterminé, mais exerçant leurs fonctions d'une façon ininterrompue, et prononçant, en vertu d'un mandat fondé sur une convention générale, en dehors de toute pensée de transaction, et sur la base d'une procédure simple et peu coûteuse, des sentences dictées par les seules règles du droit.

Les avantages d'un tel organe pour l'administration internationale de la justice sont manifestes. Outre ceux qui viennent d'être indiqués, il y a lieu de relever le fait qu'un tribunal permanent, composé de juges qualifiés, sera en mesure, grâce à une pratique ininterrompue, de contribuer efficacement, pour le plus grand bien de la vie internationale, au développement et à la fixation des règles du droit des gens.

Si les commissions n'ont pas hésité, par conséquent, à préconiser l'institution d'une Cour de justice internationale, il ne s'ensuit nullement que la procédure d'arbitrage suivie jusqu'à ce jour leur paraisse devoir être abandonnée. Elles estiment, au contraire, qu'il serait opportun de maintenir la Cour permanente d'arbitrage de La Haye dans sa forme actuelle et de continuer à recourir aussi, comme on l'a fait jusqu'à ce jour, à des tribunaux d'arbitrage spécialement constitués pour le règlement de litiges internationaux déterminés. Pour les différends non susceptibles d'une solution exclusivement juridique, mais où des considérations politiques entrent en jeu, il est à souhaiter, au degré de développement atteint par les relations internationales, que les États en litige aient la faculté d'appeler à siéger dans le tribunal des juges pris parmi leurs propres nationaux, et qui, connaissant mieux que d'autres, comme tels, la façon dont leur pays envisage l'objet du conflit, seraient mieux en mesure aussi de faire des propositions de règlement qui tiendraient compte des divers intérêts en présence. La tâche la plus immédiate de la Cour de justice consisterait, par contre, à examiner les questions d'un caractère juridique nettement marqué et celles dont l'importance ne serait pas assez considérable pour justifier l'appareil compliqué de la procédure arbitrale actuelle. Il ne serait guère possible, sans doute, ni désirable, de délimiter avec rigueur, dans une convention générale, le champ d'action des divers systèmes de

tribunal. C'est aux États qu'il conviendrait de s'en remettre du soin de s'entendre, soit à l'avance, soit en cas de conflit, sur le choix du tribunal. On peut espérer pourtant que l'évolution de la vie internationale tendrait à élargir progressivement le champ d'activité de la Cour de justice.

La question de l'organisation de cette Cour présente certaines difficultés, tenant avant tout à l'opposition qui existe entre l'intérêt des grandes puissances à obtenir une influence prépondérante sur la composition du tribunal et le désir fort naturel des petites puissances de voir consacrer, à cet égard comme à d'autres, le principe de l'égalité juridique des États. Ce principe, il ne leur est guère possible d'y renoncer. La concession qu'elles ont faite en adhérant à la convention relative à la Cour internationale des prises adoptée par la deuxième Conférence de La Haye, et qui restreignait dans une si forte mesure leur représentation, ne saurait être invoquée comme un précédent lorsqu'il s'agit de l'organisation d'une Cour ayant des attributions beaucoup plus étendues.

Mais les difficultés du problème ne seront sans doute pas insolubles. A la deuxième Conférence de La Haye, il est apparu que des projets fondés sur le principe de l'égalité juridique des États, recevaient l'adhésion de plusieurs grandes puissances. Et pourvu que la garantie soit fournie que les considérations politiques ne joueront aucun rôle dans la nomination des juges, on peut s'attendre, sans qu'il soit besoin de précautions spéciales, à ce que les grandes puissances ou les systèmes juridiques les plus répandus, dans le rayon desquels se trouvent assez naturellement un nombre relativement considérable de candidats qualifiés, soient représentés à la Cour en proportion. Une garantie d'impartialité dans l'élection des juges s'énonce dans la disposition du projet des commissions qui confie cette élection aux membres de la Cour permanente d'arbitrage actuelle. En raison de leur absolue indépendance, à l'égard des gouvernements, et des hautes fonctions judiciaires qu'ils exercent eux-mêmes, ceux-ci se trouvent placés, en effet, dans des conditions qui permettent d'espérer qu'ils s'inspireraient dans leurs choix du seul souci de donner à la Cour internationale de justice la composition la plus satisfaisante au point de vue juridique.

Dans l'Assemblée Électorale qui, aux termes du projet, serait appelée à désigner les membres de la Cour de justice, chaque État serait représenté par un de ses juges à la Cour

permanente d'arbitrage, plus exactement par le premier de ceux-ci dans l'ordre numérique, ou à son défaut, par le premier de ceux qui, après lui, ne seraient pas empêchés. Les gouvernements n'auraient d'autre droit à exercer une action sur l'élection que celui de présenter une liste de candidats entre lesquels les électeurs auraient à choisir. En vue de prévenir qu'un État ne fût trop fortement représenté à la Cour, il a paru indiqué de stipuler qu'en aucun cas plus de deux ressortissants d'un même État n'y pourraient siéger à la fois. Une disposition formulée à titre d'alternative porte que tous les juges doivent appartenir à des États différents.

L'examen des conflits aurait lieu en dehors de toute question de nationalité; toutefois, si un des juges appartenait à l'un des États en litige, alors que la Partie adverse ne serait pas représentée à la Cour, il aurait à abandonner son siège. Les Parties ne seraient pas autorisées à influer, par récusation ou autrement, sur la composition de la Cour dans le cas particulier. Cette indépendance absolue du tribunal, à l'égard des requérants aussi, constitue évidemment une garantie d'impartialité et de stabilité dans l'administration de la justice.

Parmi les autres dispositions du projet relatives à la composition de la Cour de Justice, il y a lieu de relever seulement celles qui, visant à garantir la totale indépendance des juges à l'égard des gouvernements, portent que les membres de la Cour seront nommés à vie, qu'ils seront en principe inamovibles et ne pourront en aucun cas être relevés de leurs fonctions sur l'initiative d'un gouvernement. Une alternative fixe toutefois à neuf années la durée de leur mandat.

En ce qui concerne la procédure de la Cour de Justice, le projet adopte les règles énoncées pour la procédure d'arbitrage dans la première convention de La Haye de 1907. Il n'y a pas lieu d'entrer ici dans plus de détails relativement à ces dispositions.

Les articles 48–72 du projet concernent la *procédure d'enquête et de conciliation.*

Touchant les organes éventuels de cette procédure, on se trouve en présence de diverses possibilités, qui peuvent toutefois se ramener à trois. La première consisterait à créer un organe central dont la position correspondrait à celle de la Cour internationale de justice et qui aurait à examiner tous les litiges internationaux susceptibles d'être soumis à la procédure

d'enquête et de conciliation. Diverses propositions ont été formulées dans ce sens au cours des dernières années, en Angleterre et en Amérique. Une deuxième solution tendrait à éviter cette centralisation en confiant aux États le soin d'instituer, deux par deux, les organes auxquels ils auraient à soumettre leurs conflits. Dans cette hypothèse, ou bien les États s'entendraient pour procéder à cette institution à l'avance, ou bien au contraire ils attendraient, pour l'effectuer, qu'un différend eût surgi entre eux. C'est la première de ces alternatives qui a trouvé son application dans les conventions relatives à la procédure d'enquête et de conciliation que les États-Unis ont conclues, en ces dernières années, dans les conditions énoncées plus haut, avec un certain nombre d'autres puissances. On la désigne communément, d'après le secrétaire d'État américain qui a participé à la conclusion des accords dont il s'agit, sous le nom de système Bryan. La deuxième alternative a également ses partisans.

En ce qui les concerne, les commissions n'ont pu se ranger à l'idée de confier à un organe central la procédure d'enquête et de conciliation. Celle-ci ayant pour objet d'aboutir à une conciliation, il paraît naturel et indiqué que les parties en litige soient directement et essentiellement représentées dans l'organe chargé de préparer cette solution. C'est là une condition pour le moins aussi nécessaire que lorsqu'il s'agit, comme c'est le cas pour la procédure d'arbitrage, d'un organe appelé à résoudre un conflit par une sentence obligatoire. Mais la représentation des parties est incompatible avec le principe d'un organe central. Lors même que celui-ci serait constitué de manière à ce que tous les États y fussent représentés—ce qui tendrait à en faire une assemblée trop nombreuse—aucun État n'y pourrait obtenir une représentation assez forte pour remplir sa tâche sous le rapport en cause.

Des deux autres systèmes principaux qui s'offraient à elles, les commissions ont cru devoir adopter, pour la mettre à la base de leur projet, une organisation imitée des conventions Bryan, mais en proposant à titre d'alternative celle qui ne prévoit la nomination de la commission d'enquête et de conciliation qu'après l'ouverture du conflit (art. 48 et 49). Les deux systèmes ont leurs avantages. Le premier, qui permet d'engager la procédure sans délai ni frottements d'aucune sorte, parce que l'organe d'enquête se trouve prêt à fonctionner dès

que surgit un différend, présente à cet égard une supériorité dont la haute importance saute aux yeux. D'autre part, le fait qu'un organe d'enquête spécialement constitué en vue d'un litige déterminé peut être composé aussi de manière à satisfaire aux conditions spéciales de ce litige, constitue un argument en faveur du deuxième. Afin de tirer parti en quelque mesure de ce dernier avantage dans le texte principal de leur projet, les commissions ont introduit dans les dispositions relatives à la commission d'enquête et de conciliation une stipulation accordant à chacun des États en litige la faculté de remplacer par une personne spécialement compétente en la matière un des membres de la commission constituée antérieurement au conflit (art. 50).

Bien que les commissions n'aient pas cru pouvoir, ainsi qu'il a été dit plus haut, se ranger à l'idée de confier la procédure d'enquête et de conciliation elle-même à un organe central, celui-ci ne leur en paraît pas moins nécessaire pour l'exercice de certaines fonctions qui se rattachent à cette procédure.

Il importe, en effet, qu'un organe centralisateur se trouve pour surveiller l'exécution par les États des obligations qui leur incombent concernant la nomination de la commission d'enquête et de conciliation, et pour se substituer aux défaillants en désignant à leur place les commissaires que ceux-ci auraient négligé de nommer.

Une autre et importante fonction dont il y aurait lieu de charger un organe central est la nomination, dans le cas où l'accord n'aurait pu se faire à ce sujet entre les Parties, du président de la commission d'enquête et conciliation. Le projet l'attribue au Conseil International dont les commissions préconisent, pour d'autres raisons encore, la création (art. 52 et 53).

Une question quelque peu délicate est celle de savoir si la procédure d'enquête et de conciliation sera appliquée lors même qu'aucune des parties en litige n'en prendrait l'initiative. Le projet formule deux alternatives à cet égard (art. 56). Suivant la première, il est loisible à la commission d'enquête et de conciliation d'engager la procédure elle-même, sans en être requise par les Parties, mais sous la condition, énoncée en vue de prévenir des mesures insuffisamment raisonnées, que le Conseil International l'y ait invitée. Aux termes de la seconde, la commission d'enquête et de conciliation ne pourra pas ouvrir la procédure spontanément, mais aura la faculté d'offrir aux

Parties, dont la liberté d'action reste réservée, ses bons offices à cet effet.

Les dispositions du projet relatives à *l'organisation permanente des Conférences de la paix ou de droit international* s'inspirent de l'idée qu'il importe au plus haut point au maintien d'une organisation juridique internationale de compléter et de perfectionner le droit matériel des gens. Ce droit, qui, autrefois, prenait essentiellement son point de départ dans la coutume, des conférences internationales l'ont, en ces dernières anneés, développé et codifié dans une mesure considérable. Les deux Conférences de la paix tenues à La Haye ont fourni à cette œuvre la contribution la plus importante, non seulement par la portée des matières traitées, mais encore en raison du fait que toute la collectivité d'États régie par le droit international s'y trouvait représentée. Aussi paraît-il hautement désirable de faire de ces conférences une institution permanente, chargée de soumettre à une étude législative les questions intéressant la vie juridique internationale. Contrairement à l'avis émis de divers côtés, les commissions n'estiment pas, toutefois, que ces conférences doivent revêtir le caractère d'une sorte de parlement international, au sein duquel des décisions seraient prises à la pluralité des voix. La création de cette autorité supérieure aux États serait actuellement une entreprise prématurée, et les petits États, en particulier, ne pourraient que s'y opposer énergiquement s'il devait s'agir de déterminer leur rang dans une association de ce genre suivant un système quelconque d'échelle graduée. Mais l'exemple des conférences antérieures atteste la possibilité d'aboutir, par le moyen d'accords, à des résultats assez importants. Et il y a tout lieu de penser que, dans l'avenir aussi, les puissances représentées aux Conférences ou une majorité d'entre elles parviendront à s'entendre pour consacrer dans des conventions les règles du droit des gens.

Les points fondamentaux du projet concernant le rôle des Conférences de la paix et de droit international sont, d'une part, les dispositions stipulant la périodicité de ces Conférences, dont la réunion ne serait plus subordonnée à l'initiative d'un État, et de l'autre, les règles relatives à la préparation de leurs travaux. Cette préparation consisterait à prendre l'avis des gouvernements sur les propositions présentées et à mettre en œuvre, en vue des délibérations de la Conférence, les matériaux ainsi obtenus. Elle comporterait, en d'autres termes, une enquête

et un rapport, et serait confiée à l'institution qui, sous le nom de Conseil International, aurait également à servir d'organe central pour la procédure d'enquête et de conciliation.

Les dispositions relatives au Conseil International, à ses attributions et à son organisation, se trouvent énoncées dans les articles 40–47. Ce Conseil serait chargé d'un certain nombre d'autres fonctions encore que celles indiquées plus haut. Il aurait, par exemple, et ce serait là une tâche importante, à soumettre aux gouvernements les projets de conventions internationales auxquels donneraient lieu les progrès réalisés et les modifications survenues dans le domaine économique et politique.

Il serait appelé, en outre, à enregistrer et à publier les traités internationaux. Enfin il lui incomberait, dans les cas où l'un des États signataires ne remplirait pas les obligations contractées par lui à raison de sa qualité de membre de la ligue projetée, de notifier le fait aux autres États signataires, et, suivant une addition proposée à titre d'alternative, de faire des propositions relatives aux mesures internationales auxquelles le fait lui paraîtrait pouvoir donner lieu. Même à défaut de dispositions spéciales imposant aux États signataires l'obligation de s'associer à des mesures collectives quelconques contre la puissance qui aurait manqué à ses engagements, il est assez naturel de penser que la violation du traité pourra conduire à une telle action les autres États membres de la ligue ou un certain nombre d'entre eux. Et il est désirable aussi qu'il en soit ainsi, quelque opinion qu'on professe, d'ailleurs, sur la question de régler par un traité l'obligation de participer à une action de cette nature.

Dans ses parties essentielles, l'organisation du Conseil reproduirait, selon le projet, celle qui est proposée pour la Cour Internationale de Justice. Comme cette dernière, le Conseil se composerait de 15 membres, domiciliés au siège de ses travaux. Les différences, par rapport à l'organisation de la Cour de Justice, consisteraient en ce que les membres du Conseil ne seraient pas nommés à vie mais pour une période de six années et que leur nomination serait faite par une assemblée électorale spéciale dans laquelle chaque État aurait un représentant désigné par son gouvernement.

Si les commissions se sont abstenues d'introduire dans leur projet des dispositions relatives aux sanctions internationales à appliquer aux États qui auraient contrevenu au statut dont il

a en vue la création, c'est, en ce qui concerne du moins les délégués suédois, parce que ceux-ci estiment—et leur gouvernement s'est prononcé dans le même sens—que l'initiative dans ce domaine n'appartient pas aux petits États. La question est étroitement liée à celle de la limitation internationale des armements. Les petits États ne sauraient qu'éprouver la plus grande hésitation à contracter l'engagement de s'associer à des mesures coercitives internationales, aussi longtemps qu'ils risquent en le faisant de se trouver placés, sans aide immédiate et efficace, en face d'un voisin plus puissant. Une réduction générale des armements modifiera évidemment cette situation. Mais ce n'est pas davantage des petits États que doivent venir les propositions relatives à ce sujet.

La commission suédoise estime, d'ailleurs, que l'absence de dispositions concernant les sanctions internationales n'empêche pas son projet, rapproché de la première Convention de La Haye de 1907, de constituer un tout, dont la réalisation est possible sans les additions dont il s'agit.

Ayant toutefois reçu depuis le dépôt de ce projet la mission d'étudier la question de l'attitude qu'il y aurait lieu pour la Suède d'adopter à l'égard des propositions qu'on peut attendre d'ailleurs, concernant la limitation internationale des armements et les sanctions internationales, elle ne manquera pas de vouer à ces problèmes aussi une sérieuse attention.

AVANT-PROJET DE CONVENTION

SUR UNE ORGANISATION JURIDIQUE INTERNATIONALE

Élaboré par les trois Comités nommés respectivement par les Gouvernements de Danemark, de Norvège et de Suède

DISPOSITIONS PRÉLIMINAIRES

1. Des conventions internationales devront être conclues relativement aux matières mentionnées ci-dessous.
2. Des invitations à cet effet devront être adressées aux États qui étaient conviés à la 2e Conférence de La Haye.

3. Dans le cas où tous ces États ne seraient pas disposés à passer de telles conventions, celles-ci devront tout de même être conclues entre les États qui se sont déclarés disposés à y participer, à condition que . . . se trouvent parmi ces États.
4. Dans le cas où d'autres États, après la conclusion des dites conventions, désireraient y adhérer, ils devront y être admis, si toutefois il n'y a pas opposition de la part d'une minorité des États contractants, déterminée dans la Convention.

Alternative: Les conditions auxquelles les États qui n'ont pas été conviés à la 2e Conférence de La Haye, pourront adhérer aux conventions en question, formeront l'objet d'une entente ultérieure entre les États contractants.

I. Obligations générales

5. Les États doivent s'engager, par une Convention générale, à soumettre tout différend survenu entre eux, et qui n'a pú être réglé par voie diplomatique, à une décision judiciaire ou à une procédure d'enquête et de conciliation.

   Les États doivent s'engager à ne pas avoir recours à des voies de force au sujet du conflit, avant que celui-ci n'ait été soumis à semblable procédure.

   La rétorsion n'est pas considérée comme voie de force dans le sens susmentionné.
6. La décision par voie judiciaire comporte le renvoi du conflit, soit:

   (*a*) devant une "Cour de Justice internationale" à instituer,

(*b*) ou devant la "Cour permanente d'Arbitrage" actuelle de La Haye,

(*c*) ou devant une autre Cour d'Arbitrage convenue entre les Parties.

Les sentences de l'une ou l'autre de ces Cours sont obligatoires pour les Parties.

7. Une procédure d'enquête et de conciliation comporte le renvoi du litige à des organes spéciaux qui devront dresser des rapports et présenter des propositions pour le règlement du litige. Ces rapports et ces propositions ne sont pas obligatoires pour les Parties.

8. Si, lors d'un conflit entre deux États, il y a désaccord au sujet de savoir si le litige doit être ou non réglé par voie judiciaire ou sur la question de savoir si le conflit est de la compétence de la Cour de Justice internationale ou de la Cour permanente d'Arbitrage ou de celle d'une autre Cour d'Arbitrage, chacune des Parties pourra soumettre le litige à la procédure d'enquête et de conciliation, sauf les cas où il en serait convenu autrement par un traité particulier passé entre les Parties.

Lorsque l'une des Parties a fait une proposition tendant à soumettre le conflit à une Cour et que l'autre Partie n'y a pas répondu dans un délai raisonnable, la première Partie pourra exiger une réponse dans un délai d'au moins 3 mois. Si la réponse n'a pas

été donnée dans le délai fixé, chacune des Parties pourra soumettre l'affaire à la procédure d'enquête et de conciliation sans égard aux conventions antérieures relatives à son traitement par la voie judiciaire.

9. Conformément au vœu unanime exprimé par la 2e Conférence de La Haye en faveur du principe de l'arbitrage général obligatoire, ce principe doit être consacré dans la plus large mesure possible.

Dans le cas où un accord général ne pourrait intervenir au sujet des matières à soumettre à l'arbitrage, des conventions particulières entre les États ou des arrangements sur les cas spéciaux (compromis) décideront quelles seront les matières qui devront être soumises à l'arbitrage et à quelle Cour elles devront être soumises.

Afin de faciliter la réalisation de cette disposition, il serait recommandable de procéder à un arrangement international à l'instar de celui qui fut recommandé par la 1ère Commission de la 2e Conférence de la Haye, et qui rendra superflu la conclusion de conventions particulières.[1]

II. Cour de Justice internationale

10. L'organisation de la Cour sera autant que possible basée sur

[1] Actes et Doc. II. p. 1019 et 1025.

le principe de l'égalité juridique des États.

11. La Cour de Justice se compose de *15 membres* choisis parmi les personnes jouissant de la plus haute considération morale et qui devront tous remplir les conditions requises dans leurs pays respectifs pour l'admission dans la haute magistrature ou être jurisconsultes d'une compétence notoire en matière de droit international. Les membres sont choisis sans égard à leur nationalité; *toutefois il ne pourra siéger à la fois plus de deux membres qui soient nationaux d'un même État.*

Alternative danoise: 27 membres.

12. Les membres de la Cour de Justice sont élus par une Assemblée Électorale où chaque État est représenté par le premier dans l'ordre numérique de ses juges à la Cour permanente d'Arbitrage de La Haye, ou si ce membre est empêché, par le membre suivant qui n'est pas empêché.

Alternative: tous les membres doivent cependant appartenir à des États différents.

Les membres sont nommés à vie.

Alternative: Les élections ont lieu, avec l'exception mentionnée au troisième alinéa, pour une période de 9 ans. Les mandats peuvent être renouvelés. Les membres de la Cour de Justice terminent les affaires qui leur ont été soumises, même dans le cas où la période pour laquelle ils ont été nommés juges serait expirée.

Après la première élection les juges sont partagés, par voie de tirage au sort, en trois groupes

égaux ayant une durée de mandat différente, de sorte que les élections futures ne portent chaque fois que sur le renouvellement d'un tiers des membres de la Cour.

13. L'élection porte sur une liste comprenant tous les candidats proposés par les Gouvernements. Chaque Gouvernement présente au maximum autant de candidats qu'il y a de mandats dans chaque cas particulier et au minimum la moitié de ce nombre. Aucune proposition indépendante ne peut être formulée au sein de l'Assemblée Électorale.
14. L'Assemblée Électorale se réunit à La Haye la première fois le 1er Juin . . . ou le jour de semaine suivant et ensuite à la même époque *tous les 6 ans*. Avant la réunion de l'Assemblée Électorale le Bureau International du Conseil Administratif de la Cour permanente d'Arbitrage actuelle convoque en temps utile le premier membre de chaque État par ordre numérique.

Alternative: tous les trois ans.

15. L'Assemblée Électorale élit elle-même son Président.
16. Avant l'élection des membres de la Cour, une délibération doit avoir lieu entre tous les électeurs présents.

    Les électeurs présents ont seuls le droit de vote.

    L'élection a lieu pour un membre à la fois.

    Pour être élu membre de la Cour le candidat doit avoir obtenu la majorité absolue

des voix données. Si, après deux tours de scrutin, aucun candidat n'a obtenu la majoritée absolue, l'élection aura lieu au troisième tour de scrutin par simple majorité.

17. Outre les membres de la Cour de Justice internationale, il y aura également 15 membres suppléants *élus pour une période de 6 ans*. Ils seront élus de la même manière que les membres ordinaires. Lors de leur élection l'Assemblée Électorale fixe également l'ordre des membres suppléants. Lorsqu'un membre ordinaire cesse d'être membre de la Cour, il est remplacé, suivant l'ordre fixé, par le premier suppléant, qui prend *à vie* la place du membre sortant.

Alternative: dont les mandats expirent à la réunion de l'Assemblée Électorale.

Alternative: , pour le restant de la durée du mandat,

Lorsqu'en d'autres cas la Cour est obligée de convoquer des suppléants, ceux-ci entrent en fonction dans l'ordre fixé lors de leur élection et y restent tant que cela est nécessaire.

Si, par suite de la règle prescrivant que plus *de deux membres* appartenant au même État ne peuvent siéger à la Cour, un suppléant est empêché, sa place sera occupée par celui qui le suit immédiatement dans la liste des suppléants.

Alternative: d'un membre

18. Les membres de la Cour sont *inamovibles*; toutefois, un membre peut être destitué, lorsqu'il doit être considéré comme étant notoirement in-

Alternative: inamovibles pendant la période de leur mandat;

capable de remplir ses fonctions. La décision relative à la matière est prise soit par la Cour, soit par l'Assemblée Électorale. Une décision de cette nature, quand elle est prise par la Cour, doit réunir toutes les voix des autres membres et, si elle est prise par l'Assemblée Électorale, les trois quarts des voix exprimées par les membres présents.

19. Les membres de la Cour permanente seront domiciliés au siège de la Cour et toucheront une indemnité annuelle fixée par la Convention. Tout membre ayant atteint l'âge de 65 ans et ayant au moins dix ans de fonction à la Cour, pourra donner sa démission et conservera en ce cas la totalité de sa rémunération annuelle comme pension de retraite. Un membre ayant atteint l'âge de 70 ans devra prendre sa retraite et aura droit à la totalité de son indemnité annuelle comme pension de retraite sans égard à la durée de ses fonctions.

20. Un membre de la Cour ne peut exercer d'autres fonctions publiques.

21. La Cour de Justice Internationale ne peut délibérer valablement que si *7 membres* sont présents.

Alternative danoise: 17 membres

22. Il y aura une procédure sommaire devant la Cour. Celle-ci constituera pour cet objet une commission composée de *3 membres*. Autant que le permettront les circonstances,

Alternative danoise: 5 membres . . . affaires. Chacun des

ces membres pourront également participer à l'examen d'autres affaires.

Les différends seront soumis à cette commission lorsque les deux Parties en seront d'accord.

Dans cette commission ne pourront siéger en même temps deux membres appartenant au même État.

23. La Cour décidera si elle doit se diviser en deux sections pour l'examen d'autres affaires que celles mentionnées au point 22.

24. La Cour choisit elle-même son Président ainsi que les présidents des sections. Elle nomme également un Secrétaire Général et son bureau.

25. La Cour de Justice Internationale connaît de toutes les matières sur lesquelles les Parties sont convenues de reconnaître sa compétence. Cet accord est considéré comme étant établi:

(*a*) lorsque les Parties, par une Convention générale, se sont engagées à soumettre à la Cour de Justice internationale tous les conflits survenus entre elles ou certaines catégories d'affaires et lorsqu'aucune des Parties ne pro-

États en litige a le droit d'exclure un membre. La règle du point 28, 6e alinéa, paragraphes 2 et 3, sera appliquée par analogie.

Alternative: Cet alinéa est supprimé.

Alternative danoise, alinéa à ajouter: En ce cas chaque section devra se composer d'au moins 11 membres; chacun des États en litige aura le droit dans chaque affaire d'exclure jusqu'à deux membres. La règle du point 28, 6e alinéa, paragraphes 2 et 3, sera appliquée par analogie.

teste devant la Cour sur l'application de la Convention au différend en question.

(*b*) lorsque les Parties, par une Convention spéciale dans un cas particulier, sont convenues de soumettre un conflit à la décision de la Cour de Justice Internationale.

26. Lorsque dans le cas mentionné au point 25, l'une des Parties ne se présente pas à la Cour ou autrement s'abstient de se prononcer dans l'affaire, l'autre Partie peut exiger que l'affaire soit jugée par la Cour de Justice Internationale sur la base de l'exposé des faits fourni par la Partie, pourvu que cet exposé ne soit pas contraire aux preuves présentées à la Cour ou à des faits notoires.

27. Lorsque la question de droit présentée est prévue dans une convention en vigueur entre les deux Parties, cette convention formera la base de la sentence.

A défaut de telles dispositions, la Cour appliquera les règles du droit international en vigueur. A défaut de règles généralement reconnues, la Cour jugera d'après les principes généraux du droit.

Alternative: A défaut de telles dispositions la Cour appliquera les règles du droit international en vigueur ou, si des règles de cette nature n'existent pas, la Cour jugera d'après ce qui, à son avis, devrait être la règle du droit international en vigueur.

28. Un juge pourra être récusé s'il a un intérêt personnel dans l'objet de l'affaire. Aucun autre motif de récusation ne pourra être invoqué que ceux mentionnés à l'art. 7 du projet de la " Cour de Justice arbi-

trale " ainsi que ceux résultant du dernier paragraphe du point 11 et du 3e *al.* du présent point.

La Cour peut également, sans en être requise par l'une des Parties, décider si l'un de ses membres doit céder sa place par suite d'intérêt personnel dans l'objet de l'affaire.

Lorsqu'un membre de la Cour appartient à l'une des Parties en litige, tandis qu'aucun membre n'appartient à l'autre Partie, le membre en question devra céder sa place à la Cour.

Dans le cas où il y a plusieurs Parties et que, par suite de la règle mentionnée au 3e al., l'on ne pourrait, en remplaçant les membres en question par des suppléants, arriver au minimum des juges requis, les Parties seront libres de désigner ceux de ces membres qui devront siéger à la Cour. Si l'accord ne peut se faire, l'affaire sera soumise à la Cour permanente d'Arbitrage. Dans le cas où l'une des Parties s'y opposerait, chacune d'elles pourra demander que l'affaire soit soumise à la procédure d'enquête et de conciliation.

Le juge intéressé est admis à voter sur la décision relative à la question de savoir s'il doit céder sa place.

Alternative danoise: 3e et 6e al

Alternative danoise, alinéa à ajouter: Chacune des Parties en litige a le droit, avant le commencement de l'examen de l'affaire et sans donner de motifs, d'exclure

jusqu'à trois des membres de la Cour. Toutefois l'exclusion ne pourra porter que sur 6 membres au maximum, même s'il y a plusieurs Parties. Si, en ce cas, il n'y a pas accord entre les Parties au sujet des membres à exclure, la question sera décidée par voie de tirage au sort parmi les membres que les Parties désireraient exclure.

29. La langue de la Cour est le français. Toutefois une autre langue pourra être employée du consentement de la Cour et lorsque les deux Parties en seront d'accord.

30. La Cour de Justice Internationale ne s'occupe que du règlement des conflits entre les États. Cette disposition n'exclut cependant pas qu'un État puisse soumettre à la Cour les droits qu'il fait valoir au nom d'un de ses ressortissants contre un autre État.

31. Lorsqu'une affaire soumise à la Cour porte sur l'interprétation d'une convention internationale générale ou universelle, ou si elle concerne d'une autre manière les intérêts d'un État tiers, ce dernier aura le droit d'intervenir dans l'affaire.

Les États tiers doivent être avertis par la Partie qui a intenté l'affaire.

32. Les règles de procédure de la 1ère Convention de La Haye de 1907 et du projet d'une "Cour de Justice arbitrale" doivent en principe être appliquées par analogie, pourvu qu'il n'en soit pas prévu autrement ci-après.

33. Les Parties auront la faculté, d'après des règles à fixer par la Convention, de produire des témoins et de faire entendre des experts devant la Cour.
34. Les décisions de la Cour sont prises à la majorité relative des voix. En cas d'égalité des voix, la voix du Président est prépondérante.
35. La sentence doit être motivée. Elle est signée par le Président et le Secrétaire Général. Lecture en est faite en séance publique, les Parties présentes ou dûment appelées.

    Si la sentence n'a pas été rendue à l'unanimité, lecture sera faite également des opinions divergentes.

Alternative: Les opinions divergentes ne seront pas publiées.

36. La sentence décide définitivement et sans appel la contestation. Une révision pourra cependant être admise à la requête de l'une des Parties, si elle est motivée par la découverte d'un fait nouveau qui, de l'avis de la Cour, aurait été de nature à exercer une influence sur la sentence.
37. Des dispositions devront être formulées règlant les effets que produiront les sentences concernant l'interprétation des Conventions internationales pour d'autres États que ceux qui ont été Parties ou qui sont intervenus dans l'affaire.
38. Les États contractants supportent une part égale des frais de la Cour.
39. Chaque Partie supporte ses propres frais de procédure pour chaque affaire.

III. Conseil International

40. Les États Contractants instituent un Conseil International qui aura pour mission:

(*a*) de suivre l'évolution de la vie internationale dans les domaines politique et économique, et de soumettre aux Gouvernements les projets de conventions internationales auxquelles cette évolution paraîtra devoir donner lieu,

(*b*) d'assurer, conformément aux dispositions du titre V, la continuité entre les Conférences internationales de la Paix,

(*c*) d'enregistrer et de publier dans un bulletin les traités tant généraux que particuliers avec leurs ratifications,

Alternative à ajouter: qui lui paraîtront avoir un intérêt général,

(*d*) de servir, dans les conditions déterminées au titre IV, d'organe central pour la procédure d'enquête et de conciliation,

(*e*) dans les cas où l'un des États Signataires n'aurait pas rempli les obligations auxquelles il est tenu en vertu de la présente Convention, de notifier le fait aux autres États Signataires.

Alternative à ajouter: et de proposer les mesures internationales auxquelles ce fait paraîtrait pouvoir donner lieu.

41. Le Conseil International se compose de 15 membres et d'un nombre égal de membres suppléants, nommés pour un

terme de 6 ans. Tous les membres et tous les membres suppléants doivent appartenir à des États différents. Les diplomates en service actif ne peuvent pas faire partie du Conseil. Les membres et les membres suppléants sortants sont rééligibles.

42. Les membres du Conseil International et leurs suppléants sont nommés par une Assemblée Électorale au sein de laquelle chaque État est représenté par un électeur désigné par son Gouvernement.

43. Les dispositions des points 13-16 relatives à la réunion de l'Assemblée Électorale et à l'élection des membres de la Cour de Justice Internationale et de leurs suppléants, sont également applicables en ce qui concerne le Conseil International.

Il sera fait application des dispositions du point 17 ci-dessus pour ce qui concerne l'entrée des membres suppléants dans le Conseil.

44. Les membres du Conseil auront leur domicile à . . . Ils reçoivent une rémunération annuelle de . . .

45. Le Conseil choisit dans son sein son Président ainsi que deux Vice-Présidents. Il nomme les fonctionnaires nécessaires.

Le Conseil arrête lui-même son règlement organique. Pour l'examen de questions importantes, il peut s'adjoindre des experts et constituer des commissions d'étude.

46. Les frais de l'organisation et de l'activité du Conseil sont répartis également entre les États Signataires.
47. Le Conseil International élabore en temps utile avant le commencement de chaque année un budget des dépenses communes imposées aux États par l'activité de la Cour de Justice et du Conseil ainsi que des Conférences internationales de la Paix ou de Droit International, et communique à chaque État le montant de sa contribution annuelle.

IV. Procédure d'enquête et de Conciliation

48. Dans les trois mois qui suivent la ratification de la présente Convention, les États Contractants nommeront des Commissions d'enquête et de conciliation, de sorte qu'il y ait, pour chaque État, autant de Commissions qu'il faut pour l'examen des conflits qui surviendraient entre lui et chacun des autres États contractants.
49. Chaque État nomme deux membres de la Commission d'enquête et de conciliation, l'un parmi ses propres nationaux et l'autre parmi les ressortissants d'un État tiers. En outre, les deux États désignent ensemble le Président de la Commission parmi les ressortissants d'un État tiers.

Le Président et les autres membres de la Commission

Alternative: Dans le cas où, aux termes des points 5, 8 et 28, 4e alin., un différend entre deux ou plusieurs États devrait être soumis à une procédure d'enquête et de conciliation, les Parties nommeront une Commission d'enquête et de conciliation chargée d'instruire l'affaire.

sont nommés pour une période de . . . Sauf accord contraire entre les Parties, le Président et les membres *sont inamovibles pendant la durée de leur mandat.* En cas de décès ou de retraite d'un membre, il doit être pourvu —dans les deux mois qui suivront et, en tout cas, aussitôt qu'une affaire sera soumise à la Commission d'enquête et de conciliation—à son remplacement pour le restant de la durée de son mandat.

Alternative: ne peuvent être révoqués pendant la durée de leur mandat que dans les conditions prévues aux points suivants.

La même personne peut être nommée Président ou membre de plusieurs Commissions d'enquête et de conciliation.

50. Dans le délai de 15 jours, à dater de celui où le recours de l'un des États en litige à la Commission d'enquête et de conciliation est notifié au Président de la Commission, *ou à compter du jour où le Président a notifié aux États en litige le désir de la Commission de procéder, même à défaut de recours de leur part, à l'examen de leur différend,* chacune des Parties pourra, pour l'examen du litige visé, remplacer l'un des membres désignés par elle par une personne possédant une compétence spéciale dans la matière, sous réserve, toutefois, de la règle statuée au point 49 et portant que pas plus d'un membre ne peut être pris parmi les nationaux de l'un des États en litige.

Alternative: Les mots soulignés sont supprimés.

La Partie qui voudra user

de ce droit, en avertira immédiatement la Partie adverse; dans ce cas, celle-ci aura la faculté d'user du même droit, dans le délai de 15 jours à compter du jour où l'avertissement lui sera parvenu.

51. Toute nomination de membres d'une Commission d'enquête et de conciliation sera notifiée au Conseil International. Il en sera de même de tout changement survenu dans la composition d'une Commission. Le Conseil International dressera un tableau des Commissions d'enquête et de conciliation nommées par les États.

52. Si une Commission d'enquête et de conciliation est restée incomplète par le fait que l'un des États en litige a négligé de nommer, dans les délais fixées aux points 48 et 49, 2e al., les membres de la Commission d'enquête et de conciliation dont le choix lui appartient exclusivement, le Conseil International devra au plus tôt en aviser l'État en question. Si, un mois après cet avis, la nomination n'a pas eu lieu, le Conseil International désignera le ou les membres manquants.

Application sera faite dans ce cas de la règle stipulant que la Commission ne doit pas compter deux ressortissants d'un même État.

Alternative: Si, à l'occasion d'un litige survenu entre deux États, l'une des Parties a nommé les membres dont le choix lui appartient et qu'elle ait avisé de leur nomination la Partie adverse, mais que celle-ci aura négligé de choisir des membres dans le délai d'un mois, le Conseil International, sur notification du fait par le premier des dits États, désignera les membres de l'autre Partie. Le Conseil nommera également, dans ce cas, après avoir pris l'avis des Parties, le Président de la Commission.

53. Si, dans un délai de 4 mois à dater de la ratification de la présente Convention, deux États

Alternative au 1er al.: Si les deux Parties, après avoir nommé chacune en ce qui la concerne les

ne sont pas parvenus à s'entendre sur la nomination du Président de leur Commission, celui-ci sera désigné par le Conseil International sous réserve de l'observation de la règle statuée au point 52, 2e al. La même disposition s'appliquera dans le cas où, deux mois après le décès ou la retraite du Président, l'accord n'aurait pu se faire entre les Parties sur le choix d'un nouveau Président.

Dans le cas où la nomination du Président de la Commission doit être faite par le Conseil, chaque Partie a le droit d'exclure 6 membres du Conseil au maximum, à l'exception toutefois du Président. La nomination est faite à la majorité des voix par les membres restants. En cas de partage des voix, le Président a la voix prépondérante.

54. Si, à l'expiration du mandat d'un membre, il n'est pas pourvu à son remplacement, son mandat est censé renouvelé pour une période de . . .

Un membre dont le mandat expire au cours de la procédure d'enquête et de conciliation relative à un litige, restera en fonctions jusqu'à l'achèvement de la procédure, nonobstant le fait que son remplaçant a été désigné.

Sur la demande de l'une des Parties, les fonctions du Président prendront fin à l'expiration de son mandat, membres de la Commission d'enquête et de conciliation, ne parviennent pas à s'entendre sur le choix du Président, dans un délai d'un mois à compter du jour où les autres membres sont au complet, le Président sera désigné par le Conseil International.

sans pouvoir cesser, toutefois, au cours d'une procédure.

Alternative (54 bis): Dans le cas où un conflit survenu entre deux États est soumis, soit par l'un d'entre eux, soit par tous deux, à la Commission d'enquête et de conciliation nommée par eux et que, avant la réunion de la Commission, un ou plusieurs autres États adressent au Conseil International une requête tendant à être représentés à la procédure, le Conseil examinera le bien-fondé de cette demande. Si celle-ci est admise, le conflit sera soumis à une Commission spéciale.

Cette Commission sera composée de la manière suivante: le Conseil International invite chacun des États intéressés à nommer parmi ses ressortissants un membre de la Commission. Il choisira ensuite à l'expiration d'un délai de 15 jours à dater de l'invitation, les membres de la Commission dont le choix appartient aux États en litige et que ceux-ci n'auraient pas nommés eux-mêmes dans le susdit délai ainsi qu'un nombre de membres égal à celui que compte déjà la Commission.

Enfin le Conseil International élira, dans les . . . jours suivants, le Président de la Commission d'enquête. Le Président ne doit pas appartenir à l'un des États en litige. Chacun de ceux-ci a le droit, avant cette élection, d'exclure un membre du Conseil International, sauf le Président. Le Président de la Commission d'enquête est élu par les membres restants à la simple majorité. En cas de partage des voix, celle du

Président du Conseil International a la prépondérance.

Dans une Commission d'enquête constituée dans les conditions susdite aucun État ne peut être représenté par plus d'un de ses ressortissants.

55. La Commission d'enquête et de conciliation fera un rapport sur chaque litige qui lui aura été soumis, soit par les deux Parties, soit par l'une d'elles. Elle présentera également, s'il y a lieu, un projet de règlement à l'amiable du litige.

56. La Commission de conciliation pourra aussi, sur l'invitation du Conseil International, même à défaut de recours des Parties, engager elle-même une procédure d'enquête et de conciliation.

Alternative: La Commission d'enquête et de conciliation pourra aussi, même à défaut de recours des Parties, offrir son concours pour l'ouverture de la procédure d'enquête et de conciliation.

57. Le Conseil International pourra, dans les matières non réglées par la présente Convention, arrêter des dispositions générales touchant la procédure des Commissions d'enquête et de conciliation.

A tous autres égards la Commission pourra régler elle-même sa procédure dans chaque cas déterminé.

58. Lorsque, sur l'initiative de l'un ou de l'autre des États en litige, un différend sera soumis à la procédure d'enquête et de conciliation, cet État en informe le Conseil International et le Président de la Commission compétente. Le Président convoque la Commission dans le plus bref délai possible.

59. Les Parties sont tenues de fournir à la Commission d'enquête et de conciliation toutes les informations nécessaires en vue de l'enquête et de l'élaboration du rapport, et de lui faciliter à tous égards l'accomplissement de sa tâche.

60. Sauf convention contraire entre les Parties, une Commission d'enquête et de conciliation se réunit au siège du Conseil International.

Toutefois, si elle le juge nécessaire en vue, soit d'une descente sur les lieux, soit à tout autre égard de la conduite satisfaisante de l'enquête, la commission pourra se transporter dans un lieu autre que le susdit. Il lui sera également loisible de charger son Président ou tels autres de ses membres de procéder dans un autre lieu à une partie de l'enquête. Si elle confie ce mandat à des membres autres que le Président, le nombre de ceux-ci pris parmi les commissaires désignés par l'une des Parties en litige sera égal à celui des membres choisis parmi les commissaires nommés par toute autre Partie.

61. Pour toutes les notifications que la Commission aurait à faire sur le territoire d'un État tiers contractant, la Commission s'adressera directement au Gouvernement de cet État. Il en sera de même s'il s'agit de faire procéder sur

place à l'établissement de tous moyens de preuve.

Les requêtes adressées à cet effet seront exécutées suivant les moyens dont l'État requis dispose d'après sa législation intérieure. Elles ne peuvent être refusées que si cet État les juge de nature à porter atteinte à sa souveraineté ou à sa sécurité.

La Commission aura aussi toujours la faculté de recourir à l'intermédiaire de l'État sur le territoire duquel elle a son siège.

62. Les Parties ont le droit de se faire représenter auprès de la Commission de conciliation par des agents.

63. Le Président peut poser des questions aux Parties. En cas de refus d'une Partie de répondre à une question, il en est pris acte.

64. Les débats devant la Commission ne sont publics que dans le cas où les Parties en sont d'accord et si la Commission y donne son assentiment.

65. La Commission prend, à la simple majorité des voix, les décisions relatives à son rapport et aux projets de règlement à l'amiable. Chaque membre a une voix, celle du Président étant prépondérante en cas de partage.

L'avis motivé des membres restés en minorité sera consigné dans le rapport.

66. Le rapport de la Commission est signé par le Président et

immédiatement porté à la connaissance des Parties et du Conseil International.

67. Le Conseil International recueille tous les rapports présentés par les diverses Commissions et publie chaque année un rapport général relatif aux procédures d'enquête et de conciliation instituées.

68. Sauf convention contraire entre les Parties, la Commission d'enquête et de conciliation devra avoir achevé ses travaux dans le délai d'une année à compter du jour où elle a ouvert l'enquête relative au litige.

69. Chacune des Parties indemnisera les membres nommés par elle et fournira la moitié de l'indemnité du Président. Le chiffre de cette dernière sera fixée par le Conseil International.

Les Parties devront chercher à s'entendre pour que, des deux côtés, les indemnités des membres soient fixées au même chiffre.

Chaque Partie supportera ses propres frais de procédure et la moitié de ceux que la Commission déclare frais communs.

70. Il appartiendra aux Parties de décider, d'un commun accord, si le rapport de la Commission d'enquête et de conciliation doit être publié immédiatement après son dépôt. Toutefois, même à défaut de cet accord, la Commission

pourra, en cas de raisons spéciales, décider que le rapport sera publié immédiatement.

Si, dans le cas où cette publication n'a pas eu lieu, les Parties n'ont pu se mettre d'accord sur l'objet du litige dans les . . . qui suivent le dépôt du rapport, ou que, avant l'expiration de ce délai, elles aient recours aux voies de force, le rapport sera publié par le Conseil International.

71. L'obligation qui, en vertu du point 5, incombe aux États en litige de s'abstenir, pendant la procédure d'enquête et de conciliation, de tout recours aux voies de force, subsiste pendant un délai de trente jours à compter du dépôt du rapport.

Alternative à ajouter: Si, pendant ce délai, cinq au moins des États contractants ont offert leur médiation aux Parties en litige dans le conflit, celles-ci seront tenues de s'abstenir d'avoir recours aux voies de force durant un délai ultérieur de trois mois.

Si la Commission n'a pas achevé ses travaux dans le délai prévu au point 68, les Parties reprennent leur liberté d'action.

72. Dès la réception du rapport de la Commission d'enquête et de conciliation, les États en litige s'employeront à régler directement leur différend sur la base des conclusions de la Commission.

V. ORGANISATION PERMANENTE DES CONFÉRENCES INTERNATIONALES DE LA PAIX OU DE DROIT INTERNATIONAL

73. Les Conférences Internationales de la Paix ou de Droit international sont maintenues comme Conférences diplomatiques à sessions périodiques.

74. Les Conférences ont pour mission d'élaborer et de chercher à faire adopter des Conventions internationales sur toutes les questions d'ordre général intéressant la Communauté de Droit international, et dont la solution peut concourir au maintien de la paix. Elles ont notamment pour tâche de codifier et de développer le Droit international, ainsi que de créer et de développer des organes propres à assurer et à favoriser l'évolution du Droit international.

75. Les Conférences se réunissent tous les cinq ans à . . .

Il sera cependant dérogé à cette règle, si la suppression ou l'ajournement d'une session régulière est demandé par la majorité des États contractants et si cette majorité comprend les États suivants: . . .

Des Conférences extraordinaires seront convoquées à la demande de la majorité des États contractants si celle-ci comprend tous les États susmentionnés.

La date de la réunion d'une

Conférence est fixée par le Conseil International d'accord avec le Gouvernement du pays où doit se réunir la Conférence. Ce Gouvernement expédie les convocations aux États.

76. Les États déterminent eux-mêmes le nombre de leurs délégués.

77. Les délégués plénipotentiaires des différents États ont à la Conférence le même rang diplomatique.

78. La délégation de chacun des États a une seule voix à toutes les votations.

79. La Conférence élit elle-même ses président, vice-présidents et bureau, arrête son règlement organique et détermine la langue de ses travaux.

80. Les États contractants ont le droit, avant la réunion de la Conférence, de saisir la Conférence de leurs propositions.

Les propositions faites par des corporations ou par des particuliers pourront également, sous réserve des dispositions du point suivant, être soumises à l'examen de la Conférence.

Pendant la Conférence les délégués ont le droit de proposer des amendements.

81. Pour être portée à l'ordre du jour d'une Conférence, toute proposition doit avoir été reçue par le Conseil International *un an* au moins avant la réunion de la Conférence. Le Conseil transmet à tous les Gouvernements les diverses

Alternative: six mois.

propositions reçues par lui, invite les États à se prononcer à leur sujet et prépare les matériaux ainsi réunis pour les présenter à la Conférence.

Les propositions faites par des particuliers ou des corporations ne peuvent être présentées à la Conférence que sur la décision du Conseil qui dans ce cas les communique aux Gouvernements.

82. La Conférence peut décider que les propositions portées sur son ordre du jour ne seront pas mises en délibération, ou que des propositions non inscrites à l'ordre du jour à raison de leur présentation trop tardive, feront l'objet de son examen.

Les décisions susvisées sont prises à la majorité des deux tiers des voix.

83. La Conférence se divise en commissions, au sein desquelles chaque délégation a le droit d'être représentée par un membre. Les commissions pourront instituer au besoin des comités d'examen.

Les délibérations de la Conférence et des commissions sont publiques, sauf décision contraire prise dans des cas particuliers pour des raisons spéciales.

84. Les projets adoptés par la Conférence (Conventions, Déclarations, Vœux) ne seront obligatoires que pour ceux des États représentés, qui les auront ratifiés par l'organe de leurs autorités compétentes.

Si un Gouvernement n'a pas ratifié les Conventions adoptées par une Conférence dans le délai de . . . le Conseil International a le droit de lui adresser un avertissement à ce sujet.

85. Les ratifications ne pourront porter aucune réserve au sujet des stipulations isolées des conventions auxquelles elles se rapportent.
86. L'Acte final de chaque Conférence reproduira, comme décisions de la conférence, toutes celles qui auront été prises par les trois quarts au moins des États représentés.
87. Il est loisible aux États qui le désireront, de conclure entre eux, pendant la session d'une Conférence, des conventions spéciales reproduisant le texte des projets qui n'auront pas réuni, au sein de la Conférence, les trois quarts des suffrages des États représentés.
88. Les États s'engagent à instituer des Commissions permanentes (Bureaux permanents) pour la préparation des travaux des Conférences internationales.

Ces Commissions (Bureaux)

Alternative, nouveaux alinéas 2 et 3: Si, dans le délai d'une année à compter de la clôture d'une Conférence, un État n'a pas notifié sa ratification, ni manifesté son intention de ne pas adhérer aux projets de la Conférence, ceux-ci, quoique non ratifiés, seront obligatoires pour l'État en question.

Le Conseil International devra, à l'expiration du délai mentionné, communiquer à tous les Gouvernements ayant adhéré à la présente Convention, une liste des États pour lesquels la décision est obligatoire.

pourront, avec le consentement de leur Gouvernement, entrer en rapports directs avec le Conseil International (Chap. III.).

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THE END